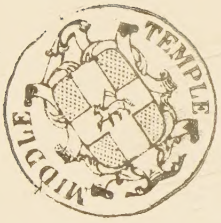
SNOWDEN'S POLICE OFFICER'S GUIDE

T. HASTINGS LEES



SNOWDEN'S POLICE OFFICERS' GUIDE.

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SNOWDEN'S

POLICE OFFICERS' GUIDE

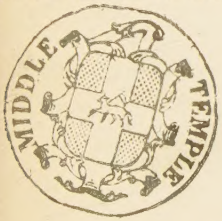
WITH AN EPITOME OF

THE POLICE (ENGLAND) ACTS;

THE POLICE ACT, 1890; THE CRIMINAL LAW CONSOLIDATION ACTS; THE LICENSING ACTS; THE SUMMARY JURISDICTION ACTS,

AND

DIGEST OF RECENT CIRCULARS OF SECRETARY OF STATE.



TENTH EDITION.

BY

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LONDON:
SHAW & SONS, FETTER LANE & CRANE COURT, E.C.
BUTTERWORTH & CO., 7, FLEET STREET, E.C.
Law Printers and Publishers.

1897.

LONDON:
PRINTED BY SHAW AND SONS, FETTER LANE AND CRANE COURT, E.C.

PREFACE.

In editing this Tenth Edition of "Snowden" I have endeavoured to further improve the arrangement of subjects without in any way altering the character of the work.

The Book practically divides itself into three parts :— Ten preliminary Chapters deal with the Powers and Duties of Police, and contain all the information a constable can require for his ordinary every-day work. If fuller information be sought on any specific subject, it will be found under appropriate headings, alphabetically arranged in central portion of book.

An Appendix contains, in epitomised form, the statutory provisions on which Police Work is based.

The Police Acts, now known as the Police (England) Acts, are specially treated of as a synopsis in Chapter X. —as a sectional digest in Appendix. The Police Act, 1890, is similarly treated, a sectional reference being given in Index, which it is hoped may prove useful

to Chief Officers and Members of Standing Joint Committees.

Through the courtesy of Officials I have been favoured with an early copy of a "Reprint" of Police Circulars issued by the Secretary of State during the last fifteen years. An abstract of which is given. A Table of Cases is included. A Chapter on Ambulance Work is added.

T. O. H. L.

2, *Garden Court, Middle Temple, E.C.,*
and Newport, I. W.
October, 1897.

TABLE OF CONTENTS.

INTRODUCTORY.

PAGE

Introduction—Establishment of Forces—Classification—Conduct—Rules, Maxims, etc. 1

CHAPTER I.

POLICE POWERS.

Origin—Crime—Arrest—Jurisdiction 5

CHAPTER II.

POLICE DUTIES.

Beat and Patrol—Statutory Duties—Public Order—Summons—Evidence—Actions Against... 11

CHAPTER III.

PRISONERS.

Questioning—Cautioning—Searching—Handcuffing—Identification—Disposal—Escape—Expenses—Bail 16

CHAPTER IV.

PROSECUTIONS.

Procedure—Public Prosecutor—Rewards—Fees—Expenses ... 19

CHAPTER V.

CRIMINAL INVESTIGATION.

Felonies—Misdemeanors—Devices of Criminals—Swindling—Flash Language 26

CHAPTER VI.

Evidence.

PAGE

Evidence Generally—Documentary Evidence—Examination of Witnesses—Police as Advocates 35

CHAPTER VII.

Legal Principles, Definitions, etc.

Common and Statute Law—Crime—Definitions 43

CHAPTER VIII.

Borough Constables and Towns Police.

Municipal Corporations Act—Borough Constables—Towns Police 48

CHAPTER IX.

Special and Other Constables.

Special Constables—Constables on Public Works—Constables on Canals and Rivers—Parish Constables—High Constables ... 59

CHAPTER X.

The Police (England) Acts.

Synopsis of Acts 60

GENERAL SUBJECTS.

	PAGE		PAGE
Accessories	65	Bakehouses	85
Adulteration	66	Bankrupts	85
Agricultural gangs	66	Barbed wire	87
Animals, Diseases of... ...	66	Bastardy	87
Apprentices	72	Betting Acts	88
Army Act	73	Bicycles	92
Arrest	76	Bigamy	93
Arsenic Act	77	Billeting	93
Arson	78	Billiards	98
Assault...	78	Birds	99
Assize, etc.	81	Births and Deaths	101

	PAGE
Board of Agriculture... ...	102
Bodies. *See* "Dead Bodies."	
Brawling	102
Bread Act	103
Bribery	104
Burglary	105
Burials	106
Bye-laws	106
Canal boats	107
Cheating	107
Children	108
Chimney sweepers	112
Coining...	113
Common lodging-house ...	114
Compounding offences ...	115
Concealment of birth... ...	115
Conspiracies	116
Convicts	117
Coroners	117
(*See also* "Inquests.")	
Criminal Law Amendment Act. (*See* "Women and Girls.")	
Criminal Law Consolidation Acts	118
Cruelty to Animals	118
Customs Laws	122
Dead bodies	122
Debtors Act	123
Deserters	123
Disorderly houses	125
Distress warrant	126
Dogs	127
Drunkenness	130
Drunkards, Habitual... ...	131
Education Acts	132
Elections	133
Embezzlement	133
Employers and workmen ...	134
Explosives	135
Extortion	141
Extradition	141
Fugitive offenders	144
Factories and workshops ...	145
False alarms of fire	146
False pretences	147
First Offenders Act	149
Fisheries	149
Food and Drugs	153
Forcible entry...	165
Forgery	166
Game	166
Gaming Act	171
Gun licences	175
Hawkers	176
Highways	178
Locomotives	184
(*See also* "Light Locomotives."	
Homicide	185
Horse flesh	187
House breaking	188
Indecent Advertisement Act	188
Indictable offences	188
Industrial schools	189
Inquests	190
Intimidation	191
Juries	192
Justices	193
Larceny	193
Libel	199
Licensing	200
Light Locomotives	214
Local Government Act ...	220
Lotteries	222
Lunatics	223
Malicious Damage	226
Manslaughter	227
Man traps	227
Margarine	227
Marine store dealers	227
Married Women's Property Act	228
Master and servant	230
Merchandise Marks Act ...	231
Merchant Shipping Act ...	231
Metal dealers	232
Mines	233
Murder...	233
Music and dancing	233
Nuisances	233
Obscene books...	235
Pawnbrokers	236
Pedlars	236

	PAGE
Penal servitude ...	... 240
Perjury... ...	... 240
Personation	... 240
Petroleum	... 240
Poaching Prevention Act	... 242
Poisons...	... 244
Police Property Act ...	... 245
Post office offences ...	... 245
Preaching	... 246
Prevention of Crimes Act	... 246
Prisons...	... 252
Prize Fights	... 253
Public Health Act ...	... 253
Public stores	... 261
Railways	... 261
Rape	... 262
Receivers	... 263
Reformatories... ...	... 263
Rescue	... 264
Restitution	... 264
Rewards	... 266
Riots	... 267
Sacrilege	... 270
Seamen...	... 271
Sedition	... 271
Servants	... 271
Shop hours regulation	... 271
Suicide	... 271
Summary jurisdiction	... 272
Sunday Observance Act	... 274
Sureties	... 276
Swearing	... 277
Telegraphs	... 277
Theatres	... 277
Threats	... 279
Threshing machines ...	... 279
Towns Improvement Clauses Act	... 280
Towns Police Clauses Act	... 281
Trades Unions ...	... 289
Training and drilling	... 290
Tramways	... 290
Treason	... 290
Treasure trove ...	... 290
Trespass	... 291
Truck Act	... 292
Uniforms Act	... 292
Vaccination	... 293
Vagrants	... 293
Verminous persons ...	... 300
Vexatious indictments	... 300
Warrants	... 300
Weights and measures	... 304
Whipping	... 311
Wife	... 311
Women and girls ...	... 312
Wrecks...	... 321
Treatment of persons apparently drowned	... 322

APPENDIX.

EPITOME OF STATUTES.

I. Criminal Law Consolidation Acts.

	PAGE
Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94) ...	... 326
Larceny Act, 1861 (24 & 25 Vict. c. 96)	... 327
Malicious Damage Act, 1861 (24 & 25 Vict. c. 97)	... 340
Forgery Act, 1861 (24 & 25 Vict. c. 98)	... 348
Coinage Offences Act, 1861 (24 & 25 Vict. c. 99)	... 350
Offences against the Person Act, 1861 (24 & 25 Vict. c. 100)	... 355

II. Licensing Acts.

PAGE
Alehouse Act, 1828 (9 Geo. 4, c. 61) 363
Licensing Act, 1842 (5 & 6 Vict. c. 44) 364
Refreshment Houses Act, 1860 (23 Vict. c. 27) 364
Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27) 365
Licensing Act, 1872 (35 & 36 Vict. c. 94) 366
Licensing Act, 1874 (37 & 38 Vict. c. 49) 375
Beer Dealers' Retail Licences (Amendment) Act, 1882 (45 & 46 Vict. c. 34) 379

III. Indictable Offences and Summary Jurisdiction Acts.

Indictable offences Act, 1848 (11 & 12 Vict. c. 42) 380
Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43) 381
Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) 384
Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24) ... 394
Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43) 394

IV. Police Acts, 1839 to 1893.

County Police Act, 1839 (2 & 3 Vict. c. 93) 395
County Police Act, 1840 (3 & 4 Vict. c. 88) 398
County and Borough Police Act, 1856 (19 & 20 Vict. c. 69) ... 401
County Police Act, 1857 (20 & 21 Vict. c. 2) 404
County and Borough Police Act, 1859 (22 & 23 Vict. c. 32) ... 404
Police Superannuation Act, 1865 (28 & 29 Vict. c. 35) 405
Rules for County Police (County Police Act, 1839, s. 3 (2 & 3 Vict. c. 93)) 406
Police Disabilities Removal Act, 1887 (50 Vict. c. 9) 412
Police Disabilities Removal Act, 1893 (56 Vict. c. 6) 413
Police Returns Act, 1892 (55 & 56 Vict. c. 38) 413
Police Act, 1890 (53 & 54 Vict. c. 45) 414
Police Act, 1893 (56 Vict. c. 10) 429
Police Property Act, 1897 (60 & 61 Vict. c. 30) 432

Home Office Circulars 433
Police Returns 453
Ambulance Work 454

TABLE OF CASES.

PAGE

A.

Agnew *v.* Jobson 116
Anderson *v.* South Shields ... 91
Aplen *v.* Porritt 120
Asquith *v.* Griffen 175
Atkinson *v.* Sellers 213
Attfield *v.* Tyler 156
Att.-Gen. *v.* Delano 170
Att.-Gen. *v.* Radloff 37
Att.-Gen. *v.* Stone 234

B.

Badcock *v.* Sankey 185
Baker *v.* Herd 310
Barnes *v.* Chipp 158
Basingstoke School, *Re* ... 79
Bateson *v.* Oddy 287
Bath *v.* White ... 207, 367
Beatty *v.* Gillbanks 267
Bell *v.* Oakley... 303
Bellencontre, *Re* 196
Bens *v.* Wakefield Bank 20, 267
Bessell *v.* Wilson 16
Bew *v.* Harston 175
Blades *v.* Higgs 171
Blake *v.* Beach 208
Booth *v.* Howell 106
Bosley *v.* Davies 175
Boulter *v.* Kent JJ. 213
Bradford *v.* Dawson ... 90, 175
Bridge *v.* Parsons 120
Bridges *v.* Hawksworth ... 264
Bryan *v.* Eaton ... 226, 345
Bryson *v.* Russell 15
Budge *v.* Parsons 129
Bullock *v.* Dunlap 265

C.

Cant's case (Police Act, 1890) 415

PAGE

Cargill *v.* Cargill 230
Carpenter *v.* Stanley... ... 294
Carroll *v.* Bird 230
Case *v.* Storey ... 243, 287
Chapman *v.* Robinson ... 179
Chisholm *v.* Holland... ... 14
Clark *v.* Stanford 288
Clifford *v.* Brandon 279
Cobb *v.* G. W. R. Co. ... 261
Codd *v.* Cabe 9, 77, 208, 298, 303
Campbell *r.* Hadley 175
Colam *v.* Hall... 121
Colam *v.* Paget 120
Cole *v.* Coulton 287
Cooke, Daniel, *Re* 118
Corbett *v.* Haigh 210
Coverdale *v.* Charlton ... 182
Cowap *v.* Atherton 214
Coward *v.* Baddeley 79
Crabtree *v.* Bullman 308
Crabtree *v.* Hole 175
Craig *v.* McPhee 304
Crane *v.* Lawrence 165
Crozier *v.* Cundy 303
Cundy *v.* Lecocq 208
Curtis *v.* Embery 282
Curtis *v.* Mills 128

D.

Danford *v.* Taylor 174
Daniel *v.* Janes ... 127, 226
Darges *v.* Dunbar 161
Darlington Police Court ... 177
Davis, *Ex parte* 297
Davies *v.* Stephenson ... 175
Davy *v.* Douglas 278
Devine *v.* Keeling 210
Dey *v.* Simpson 278
Downes *v.* Johnson 89

PAGE

Downing *v.* Capel 76
Duncan *v.* Tims 42
Dyson *r.* Mason 174, 175, 297

E.

Eastwood v. Miller 89
Ellis *v.* Hulse 185
Evans *v.* Botterill 243
Everitt *r.* Davies ... 120, 129

F.

Finegan *r.* L. & N. W. R. ... 183
Fleet *v.* Johnson 268
Foot and Others (Freethinker) 102
Ford *v.* Wiley... 119
Freestone, *Ex parte* ... 243, 297

G.

Gage *v.* Elsey 163
Galliard *v.* Laxton 298
Galloway *v.* Maries 89
Gardener *v.* Bygrove... ... 79
Garforth *v.* Esam 158
Gay *v.* Powell... 268
George *v.* Carpenter 152
Godfrey *v.* Radford 310
Golding *r.* Stockton 181
Gibbons *v.* Procter 267
Gregory *v.* Jupp 278

H.

Hale *v.* Coke 157
Hall *r.* Knox 243, 244
Haigh *r.* Mayor of Sheffield... 89
Hamilton *r.* Bone 331
Harper *v.* Marcks 120
Hargreaves *r.* Diddams ... 150
Harris *v.* London Council ... 305
Harris *v.* Warre 76
Harris *v.* Williams 162
Harrison *v.* Richards ... 158
Hatton *v.* Treesby 92
Haslam *v.* Shaw 276
Hawke *v.* Dunn 90
Hawkins *v.* Williams ... 161
Haylocke *v.* Sparke 276
Henty *v.* Henty 230

PAGE

Herman *v.* Seneschall ... 354
Hudson *v.* Shooter 177
Hill *r.* Hall 112
Hogg *v.* Ward... 76
Hollins *v.* Fowler 266
Hope *v.* Evered 303
Hotchin *r.* Hindmarsh ... 154
Horder *r.* Scott 160
Horley *v.* Rogers 298
Hoyle *r.* Hitchman 154
Hurst Park case 90

I.

Innes *r.* Newman ... 106, 282

J.

Jefferson *v.* Richardson ... 209
Jenkins *v.* King 243
Jenks *v.* Turpin ... 172, 174
Johnson *v.* Fenner 296
Jones *v.* German 303
Jones *v.* Goodman 213
Jones *v.* Whittaker 98

K.

Kyle *r.* Barber 254, 281, 288, 289

L.

Lambton *v.* Mellish 234
Langrish *v.* Archer ... 173, 297
Lane *r.* Collins 156
Leah *r.* Minnes ... 211, 366
Lee *r.* Bayes 265
Lemmon *v.* Webb 198
Lester *r.* Torrens ... 207, 368
Lewis *v.* Arnold 279
Lewis *v.* Fermar 119
Liddiard *v.* Reece 156
Lindsay *v.* Cundy 266
Lloyd *v.* Lloyd 243
Lonsdale *v.* Rigg 171
Lucas *v.* Mason 79
Luff *v.* Leaper... 175
Lunnock *v.* Brown 77
Lutter *v.* Bradell 116

PAGE

M.

McClenaghan *v.* Waters ... 267
Mark *v.* Bayfus 41
May's case 272
Mercer *v.* Woodgate 180
Monck *v.* Hilton 296
Morres *v.* Nugent 128
Morris *v.* Askew 163
Mullins *v.* Collins ... 208, 368
Murch *v.* Baker 185
Murphy *v.* Manning ... 120, 129

N.

Norman *v.* Smith 17

O.

Oldham *v.* Ramsden 89
Osborne *v.* Hare 210

P.

Papping *v.* Maynard 180
Park Club Case 172
Parsons *v.* King ... 128, 283
Pashler *v.* Stevenhill 163
Patten *v.* Rymer 175
Paul *v.* Summerhayes 79, 168
Payne *v.* Hack 159
Payne *v.* Wilson 266
Peache *v.* Coleman 213
Penn *v.* Alexander 213
Penny *v.* Harrison 296
Peplow *v.* Richardson ... 213
Phillips *v.* Gateshead JJ. ... 276
Phythian *v.* Baxendale ... 182
Pointon *v.* Hill 295
Powell *v.* Kempton Park ... 90
Powell *v.* Knight 120
Price *v.* Messenger 303
Pryce *v.* Davies 169

R.

Rawlins *v.* Ellis 8
Redgate *v.* Haynes 175
Rees *v.* Yates 296
Reeve *v.* Wood 37
R. *v.* Ashman 356

PAGE

R. *v.* Ashton 174
R. *v.* Ashwell 195
R. *v.* Barrett 125
R. *v.* Bartlett 203
R. *v.* Barton 274
R. *v.* Beard 40
R. *v.* Berry 88, 225
R. *v.* Brice 41
R. *v.* Briggs 80
R. *v.* Brown 194
R. *v.* Brumby 198, 331
R. *v* Byron 148
R. *v.* Bullock 345
R. *v.* Buckmaster ... 92, 195
R. *v.* Burton 300
R. *v.* Cheshire, JJ. 292
R. *v.* Chittenden 185
R. *v.* Clark 93
R. *v.* Clarkson 268
R. *v.* Cockburn 39
R. *v.* Cohen 196
R. *v.* Collins 194
R. *v.* Compton ... 9, 77, 302
R. *v.* Coney 79, 253
R. *v.* Cowan 214
R. *v.* Cross-Whitchurch ... 314
R. *v.* Crossley 148
R. *v.* Deer 263
R. *v.* Dickson and Hubbard ... 148
R. *v.* Dobbins 207
R. *v.* Dudley 187
R. *v.* Edwards ... 36, 292
R. *v.* Ensor 199
R. *v.* Farquhar 203
R. *v.* Farrell 39
R. *v.* Fennell 36
R. *v.* Fisher 342
R. *v.* Folkingham 110
R. *v.* Foster ... 114, 148, 351
R. *v.* Francis 38
R. *v.* Gallagher 35
R. *v.* Gloster 39
R. *v.* Graham and Burns ... 234
R. *v.* Gutteridge 262
R. *v.* Hancock 199
R. *v.* Hatt 37
R. *v.* Hazleton 148
R. *v.* Hawkhurst 37
R. *v.* Herman 351
R. *v.* Hibbert 314
R. *v.* Hollis 33, 195
R. *v.* Holloway 107
R. *v.* Howard 213

	PAGE
R. *v.* Ivens	201, 363
R. *v.* Jarvis ...	36, 114, 351
R. *v.* Jones ...	36, 148, 149
R. *v.* Kenneth	103
R. *v.* Kenny	263
R. *v.* Keyn	9
R. *v.* Lawrence	148
R. *v.* Lord Leigh	416
R. *v.* Lillyman	262
R. *v.* Long	167, 284
R. *v.* Lovell	194
R. *v.* McAthey ...	199, 263
R. *v.* Magrath	195
R. *v.* Manning...	341
R. *v.* Martin	349
R. *v.* Matthias	284
R. *v.* May	116
R. *v.* Medland	236
R. *v.* Merthyr Tydvil ...	203
R. *v.* Meunier...	36
R. *v.* Morris	116
R. *v.* Myers	275
R. *v.* Negus	134
R. *v.* Oldham	105
R. *v.* Orton	253
R. *v.* Parker	36
R. *v.* Pembleton	346
R. *v.* Petch	171, 197
R. *v.* Pierce	195
R. *v.* Powell	268
R. *v.* Pratt	180
R. *v.* Prince ...	147, 314, 318
R. *v.* Ramsey	102
R. *v.* Read	171, 197
R. *v.* Redditch, JJ.	203
R. *v.* Reeves	36
R. *v.* Richardson	41
R. *v.* Ring	194
R. *v.* Robinson	328
R. *v.* Robson	92
R. *v.* Roe	197
R. *v.* Roebuck...	148
R. *v.* Rogers	339
R. *v.* Rowlands	36
R. *v.* Rue	36
R. *v.* Rymer ...	201, 214, 363
R. *v.* Scott Jervis	84
R. *v.* Sharp	195
R. *v.* Shepherd	343
R. *v.* Shickle	197
R. *v.* Simpson...	194
R. *v.* Smith, Fanny	41
R. *v.* Snape	344
R. *v.* Solomons ...	33, 194
R. *v.* Spencer and Batterham	148
R. *v.* Stannard	125
R. *v.* Stephenson	191
R. *v.* Stewart	148
R. *v.* Stimpson	329
R. *v.* Stubbs	36
R. *v.* Tilson	171
R. *v.* Thompson	37
R. *v.* Tolson	93
R. *v.* Townley ...	171, 197
R. *v.* Tuddenham	223
R. *v.* Walker	76, 134
R. *v.* Wallace	331
R. *v.* Wallis	198
R. *v.* Walton	332
R. *v.* Ward	226
R. *v.* Wardroper	196
R. *v.* Webster...	313
R. *v.* Welch	226
R. *v.* Wellings	39
R. *v.* White	110, 197
R. *v.* Whitchurch Cross ...	314
R. *v.* Whiteman	343
R. *v.* Whittaker	170
R. *v.* Wigan	285
R. *v.* Oscar Wilde	36
R. *v.* Willcock	91
R. *v.* Williams	312
R. *v.* Yates	200
Riddle *v.* Bowater	126
Roberts *v.* Garrett	40
Rook *v.* Hopley	161

S.

Sandys *v.* Markham	155
Sandys *v.* Small	155, 156, 163
Selfe *v.* Isaacson	40
Sharp *v.* Wakefield	212
Shaw *v.* Morley	89
Singleton *v.* Ellison	314
Slade, *Re*	296
Sherras *v.* De Rutzen ...	208
Smith *v.* Eldridge	208
Smith *v.* Williams	227
Snow *v.* Hill	89
Somerset *v.* Wade	208
Stace *v.* Smith ...	158, 160

	PAGE
Starr *v.* Stringer ...	305
Stokes *v.* Grissall ...	9
Stopps *v.* Northamptonshire JJ.	15, 61
Syers *v.* Conquest ...	278
Symonds *v.* Kurtz ...	303

T.

Tarling *v.* Frederick	278
Taylor *v.* Goodwin ...	284
Taylor *v.* Humphries	213
Taylor *v.* Newman ...	329
Tennant *v.* Cumberland	209
Thomas *v.* Bradbury ...	296
Thomas *v.* Powell ...	209
Thompson *v.* Thompson	230
Thorpe *v.* Priestnall ...	274
Thorne *v.* Colson ...	278
Thurgood *v.* Drew ...	128
Timothy *v.* Simpson ...	76
Todrick *v.* Wilson ...	119
Toler *v.* Bishop ...	156
Turner *v.* Morgan ...	243
Turner *v.* Waller ...	267

W.

Walker *v.* Stretton ...	106
Warmald *v.* Neale ...	93
Watson *v.* Martin ...	173
Webb *v.* Catchlove ...	41
Webb *v.* Knight ...	163
Wheeker *v.* Webb ...	158
White *v.* Feast ...	292
White *v.* Spettigue ...	265
Whittaker *v.* Rhodes...	285
Wllliams *v.* Evans ...	183, 358
Wren *v.* Pocock ...	129
Wyatt *v.* White ...	302

Y.

Yates *v.* Higgins ...	120
Yeatman *v.* Yeatman	230
Yeovil murder case ...	16

INTRODUCTION.

Police forces were first established in boroughs under the Municipal Corporations Act, 1835, for which the Act of 1882 is now substituted, and in counties under 2 & 3 Vict. c. 93 (1839), amended by 3 & 4 Vict. c. 88 (1840). The establishment of county forces was made compulsory by 19 & 20 Vict. c. 69 (1856). These and subsequent Acts provide for the appointment, pay, government, and superannuation of police.

Every police force in England and Wales is annually inspected by one of Her Majesty's Inspectors of Constabulary (appointed under 19 & 20 Vict. c. 69, s. 15), on whose certificate as to efficiency the grant made to local authorities towards pay and clothing depends.

Prior to the establishment of police forces the duties of constables were discharged by parish constables, special constables, watchmen, etc. Most of the Acts dealing with these officers are now obsolete; still certain provisions come into operation in exceptional cases and on special occasions.

Constables.

The appointment of "Parish Constables" is now restricted to certain parishes.

The Acts (*a*) regulating the appointment of "Special Constables" are 1 & 2 Will. 4, c. 41, and 5 & 6 Will. 4, c. 43,

(*a*) The Acts regulating the appointment of special and additional constables are still in frequent use, and an epitome of same (with extracts from the Acts here referred to) is given in body of work.

and in boroughs, Municipal Corporations Act, 1882, s. 196. Certain Acts regulate the appointment of constables on public works, canals and navigable rivers, and (under special Acts) in towns.

"Additional" constables may be appointed on the application and at the expense of private individuals (3 & 4 Vict. c. 88, s. 19), and when so appointed are considered part of the organized police force.

County and borough police forces as now existing were first established in boroughs under the Act 5 & 6 Will. 4, c. 76 (*b*) (1835), and in counties under 2 & 3 Vict. c. 93 (1839), and 3 & 4 Vict. c. 88. The establishment of county forces was made compulsory in 1856, under 19 & 20 Vict. c. 69. These and subsequent Acts, known as the County and Borough Police Acts, passed 1859, 1865, and 1890, provide for the appointment, pay, government, superannuation, etc., of the constabulary. The Police Act of 1890 replaces the Police Superannuation Act of 1865, and contains new and special provisions regarding "superannuation." The County and Borough Police Acts are cited in the Fifth Schedule of the Police Act, 1890, as "The Police (England) Acts." They have, owing to the passing of that Act and other recent legislation (*c*), been to a great extent amended, and powers hitherto exercised by quarter sessions are now vested in the standing joint committee of the county council.

Upwards of *forty sections* of the Acts referred to have been repealed, or to a greater or less extent amended, and important changes have been made in the method of procedure. An epitome of these statutes is given in body of work, the principal regulations affecting chief and petty constables being arranged in consolidated form.

(*b*) For which the Municipal Corporations Act, 1882, is now substituted.

(*c*) By Acts passed in 1887 (50 & 51 Vict. c. 9), and 1893 (56 Vict. c. 10), police can vote at parliamentary elections, and at municipal, school board, and other elections.

Rules of Conduct, Maxims, etc.

There is nothing recommends a policeman so much to the favourable notice of the public as kindness to the poor, to the helpless, and to children. Great forbearance should be shown towards children who may be guilty of minor street offences. A policeman who knows his duty will reason with children committing minor offences, and point out to them that they are doing wrong.

To be exercising austere authority upon every little occasion that may call for his interference will be to excite the ill-feeling of all observers, whilst the exhibition of good-tempered forbearance and friendly persuasion will not only enlist their sympathies, but in the end will greatly assist him in fulfilling those numerous and useful duties which the law of the country has charged him to execute.

As regards his conduct to his superiors, a constable should learn and ever practice the first and most important rule of discipline—namely, to receive the lawful commands of his superior officers with deference and respect, and execute them without delay. The lawful orders and commands of magistrates are to be at once obeyed. Magistrates should always be saluted when met, and a constable when addressing a magistrate or giving evidence in a court of law should stand in an upright and respectful position.

Maxims for Police Officers.

Constables are placed in authority to protect, not to oppress, the public. They should be impartial in the discharge of their duties, disregarding all political and sectarian prejudices.

When a crime has been committed, no time should be lost in investigating it, nor exertions spared to discover and bring to justice the offenders.

A constable should have a good knowledge of all reputed thieves and idle and disorderly persons in his district, and should watch narrowly those who appear to have no visible means of subsistence.

He should avoid altercations, and display perfect command of temper under insult and provocation.

Never strike but in self-defence, nor treat a prisoner with more rigour than may be absolutely necessary to prevent escape.

Practice the most complete sobriety; one instance of drunkenness may entail dismissal (*d*).

Treat with the utmost civility all classes of the community, and render assistance to those in need of it.

Exhibit deference and respect to the magistracy.

Promptly and cheerfully obey all superior officers.

Be perfectly neat and clean in person and attire.

Never sit down in a public-house or beershop.

It is the interest of every man to devote some portion of his spare time to the practice of reading and writing, and the general improvement of his mind, for ignorance is an insuperable bar to promotion in the police service.

(*d*) A constable "dismissed" from a police force is not eligible for admission to any other police force. (*Rules of Secretary of State.—April*, 1886.)

THE

POLICE OFFICER'S GUIDE

CHAPTER I.—POWERS OF POLICE.

THE constable of the vill, or petty constable, is one of the most ancient officers of the realm for the conservation of the peace, and according Lord COKE, Chief Justice, the office arose of the constitution of frank-pledge, usually attributed to King Alfred. The constable is, however, first named in the statute of 2 Ed. 3, c. 3.

It is said that "a constable hath as good authority in his place as the Chief Justice of England hath in his;" his powers, as they now exist, are detailed in the respective sections of this work.

The constable is a keeper of the peace, and his most essential duty is the preservation of the peace and the prevention of crime; for that purpose he is armed by law with the power of arrest or apprehension: but while the law confers upon a constable powers of arrest for certain offences, it at the same time requires that he shall exercise such powers legally and with proper caution.

Every individual appointed to a police force ought seriously to consider the wholly new position in which he is placed by his admission into the constabulary, whereby he becomes a peace officer, and is consequently invested with certain powers by law which he must exercise with great caution and prudence. Members of the force should act in the discharge of their various duties with the utmost forbearance, truthfulness, and civility towards all classes of Her Majesty's subjects, remembering that the security of persons and property is entrusted to their keeping, and the maintenance of public tranquillity confided to their care: they should at all times set an example in their own persons of order, sobriety, and propriety of conduct.

Every citizen is virtually a constable, and if a felony has been committed the offender may be arrested by any person on reasonable suspicion of his guilt, but a private person can only arrest *at his peril* for crimes not committed in his presence, whereas a constable can arrest on *reasonable suspicion* (*a*). A private person may apprehend without a warrant on view

(*a*) A constable may apprehend without warrant on view of a breach of the peace, but not after the affray is over, unless it is evident a serious assault has been committed, or a dangerous wound given, or that there is ground to apprehend a renewal.

of a breach of the peace and hand over the offender to a constable, and he is justified in giving in charge (*b*), and a constable in arresting, without a warrant, a party who has been guilty of a breach of the peace, if there are reasonable grounds for apprehending its continuance or renewal. An arrest on a criminal charge can be made with or without a warrant. A constable's power of arrest without warrant in cases of felony is greater than in cases of misdemeanor.

Crimes and offences.—Crimes and offences may be classified under these two heads: felonies and misdemeanors (*c*). The term felony is applied to nearly all serious crimes, such as murder, manslaughter, rape, burglary, housebreaking, forgery, robbery, larceny, embezzlement, arson, etc. Misdemeanors are crimes or offences of less serious character than felonies. *Attempts* to commit crime are classified as misdemeanors. Felonies and indictable misdemeanors are triable at quarter sessions and assizes, and minor offences (and certain statutable offences) are usually dealt with summarily by justices in petty sessions under Summary Jurisdiction Acts, 1848 and 1879.

Attempted crime.—Every attempt to commit a felony or misdemeanor or to incite another person to the commission of an indictable offence, is a misdemeanor unless otherwise provided for by *statute*, as in the case of attempted murder, which is felony.

On an indictment for the offence the party charged may be found guilty of an attempt, if it appear that he did not complete the offence (14 & 15 Vict. c. 100, s. 9); and a person indicted for a misdemeanor is not entitled to be acquitted if the offence turn out to be a felony, unless the court shall so direct.

Acquittal.—A person who has once been tried by a jury for any indictable offence and acquitted of the charge cannot under any circumstances be again tried for it, notwithstanding that additional evidence may subsequently be obtained. This is not the case, however, with prisoners discharged by magistrates, who can be re-apprehended if any new facts are brought to light.

Burden of proof.—The onus of proving that a person is guilty of the crime with which he is charged lies on the person who asserts it. In all criminal proceedings it is for the prosecution to prove their case. The law presumes a man to be innocent until the contrary appear.

Coercion.—If a married woman commits theft or other like offence in the company or by the coercion of her husband, she is not considered guilty, as she is presumed to have acted under his compulsion, and not of her own free will; but this presumption is rebuttable by proof that she acted voluntarily.

In treason, murder, manslaughter, and the like, no presumption of coercion will excuse the wife's guilt.

(*b*) *Giving into custody.*—The constable should, however, require the person making the charge to accompany him to the police station or before a magistrate, and where the complaint is not personally known to the constable, this is of especial importance. See "Treatise," 52 J. P. 385, *re* "Giving into custody."

(*c*) To which may be added minor offences.

Arrest.

An arrest on a criminal charge can be made with or without warrant (*d*).

Felonies.—A constable must arrest without a warrant anyone whom he sees in the act of committing a felony. He may also arrest anyone whom he may have just cause to suspect to be about to commit a felony. If a constable suspect a person to have committed a felony he should arrest him, and if he have reasonable ground for his suspicions he will be justified, even though it should afterwards appear that no felony was in fact committed; but the constable must be cautious in thus acting on his own suspicions.

A constable can also arrest anyone whom another positively charges with having committed a felony, or whom another suspects of having committed a felony, if the suspicion appears to the constable to be well founded, and providing the person so suspecting go with the constable.

Misdemeanors.—As a rule a constable cannot arrest without a warrant in cases of misdemeanor, but where a misdemeanor is committed in the presence of the constable he may arrest the offender without a warrant if the circumstances render such a course necessary, and the delinquent is not known. Information of the commission of a misdemeanor should not under ordinary circumstances be followed by arrest without warrant, except in case of escape from custody, or attempted felonies of a serious character, or in cases where arrest is authorized under some special statute.

If the misdemeanor be an *indictable* one, and committed in his presence, the constable may at once apprehend.

Warning.—If the constable finds his own exertions insufficient to effect an arrest he ought to warn one or more of the bystanders, "in the Queen's name," to assist him, and it is an indictable misdemeanor in anyone so warned to refuse. If a prisoner escape he may be retaken, and in immediate pursuit the constable may follow him into any place or any house.

Breaking doors.—Whenever a person is lawfully arrested for any cause and afterwards escapes and shelters himself in a house, the doors may be broken open to retake him.

If a party accused of felony takes refuge in a house, or if persons are fighting furiously in a house, or a felony appears likely to be committed, a constable may *break open the doors*, if necessary, to get in, provided he first demands admission, stating who he is and his business; but the breaking open of outer doors is so dangerous a proceeding, that the constable never should resort to it except in extreme cases, and when an immediate arrest is necessary.

Forcible entry, etc.—If a person forcibly enters the house of another, the constable may, at the request of the owner, turn him out directly; if he have entered peaceably, but having no right to enter, and the owner request the constable to turn him out, the constable should first request him to go out, and unless he do so, he should turn him out, in either case using no more force than is necessary for the purpose. See also titles Forcible entry and Trespass (General Subjects), *post*.

(*d*) See also title Arrest (General Subjects), *post*.

Time and place of arrest.—A person may be apprehended in the night as well as the day, and in any place. 29 Car. 2, c. 7, s. 6 (Sunday Observance Act, 1677), prohibited arrests on a Sunday except in cases of treason, felony, or breach of the peace, but it has been held that arrests may be made on a Sunday in any case of indictable offence.

Power is given to justices to *issue* warrants on Sunday. The power to grant the warrant would impliedly legalise its execution, and it would seem from *Rawlins* v. *Ellis* (16 L. J. Exch. 5) that a warrant for any indictable offence may be executed on a Sunday notwithstanding the Sunday Observance Act referred to.

Mode or manner of arrest.—In order to complete an arrest, the constable must actually touch or restrain the offender. The usual method is to touch the shoulder of the accused and inform him of the charge for which arrested. All arrests should be made quietly, without attracting attention or subjecting the persons to unnecessary exposure or humiliation. If in plain clothes, the constable should state he is a police officer. If the arrest is by warrant, it should be read over to the prisoner as soon as practicable. The warrant may be shown but not parted with.

Generally, if the arrest was made discreetly and fairly in pursuit of an offender, and not for any private malice or ill-will, the constable need not doubt that the law will protect him.

Reward.—As to rewards for apprehension of felon, see p. 20.

Breaches of the Peace.

The class of misdemeanors with which a constable will most frequently have to deal are assaults and breaches of the peace.

Breaches of the peace.—Where breaches of the peace are committed *within the view* of the constable he should immediately interfere, separate the combatants, and prevent others from joining in the affray. If the disturbance be of a serious nature, or if the offenders do not immediately desist, he should take them into custody, securing also the principal instigators of the tumult, and do everything in his power to restore order; but if the offenders desist, it is better to take their names and summons them. A constable should exhibit a great amount of forbearance before exercising his powers of arrest. In the case of an assault *not committed in his presence* the constable would not be justified in arresting, unless it was evident that a serious assault had been committed or a dangerous wound given. He should, however, in all cases endeavour to ascertain for the complainant the name and address of the person he accuses, and if the parties attempt to renew the affray he can at once apprehend them.

Abusive language.—If persons be merely quarrelling or insulting each other by words, the constable has no right to take them into custody, but he should be ready to prevent a breach of the peace.

If a person annoys another by abusive language or constantly following him, whereby a breach of the peace may occur, such person can be proceeded against and summoned by the party aggrieved.

In all cases of assault, riot, etc., a constable should exhibit a great amount of forbearance before exercising his power of arrest.

Arrest with Warrant.

Arrest with warrant.—As a constable acting under the authority of a warrant is in a better position to follow and arrest an offender than a constable acting without a warrant and by virtue of his office only, it is always advisable when time admits to procure a warrant for the arrest of offenders. The warrant must be in the personal possession of the constable in all cases of misdemeanor or less than felony. *Codd* v. *Cabe*, 45 L. J. 101 ; 40 J. P. 566.

Warrants executed outside the jurisdiction have to be "backed." See title WARRANTS, *post*. In case of "fresh pursuit," a constable can follow an offender into an adjoining county (within seven miles) (*f*) without having the warrant "backed." A conviction for assault upon a constable in executing a warrant which ought to have been backed cannot be upheld. *Reg.* v. *Cumpton*, 49 L. J. 41 ; 44 J. P. 489.

In proceeding to execute warrants constables should act with the utmost discretion and silence, communicating their movements to no one except members of the force. The same rule applies to other police duties.

Jurisdiction of Police.

The police have only authority to act in the district for which they are sworn in, and if they are called upon to act elsewhere they must be sworn in for the fresh district, or else be provided with a warrant properly "backed" for execution therein. See title, WARRANTS, *post*.

All offences committed on the boundary or boundaries of two or more counties, or within five hundred yards of any such boundary, or begun in one county and completed in another, may be dealt with in any of the said counties as if they had been actually committed therein ; or when committed in any coach or carriage employed in any journey or on board any vessel employed on any voyage on river, canal, etc., it may be dealt with in any county through any part of which such carriage or vessel passed.

An English ship upon the high seas is to be considered as part of the territory of England, and where any person being a British subject charged with any offence on board a British ship on the high seas or in any foreign port, or if any person not being a British subject, charged with having committed any offence on board any British ship on the high seas, is found within the jurisdiction of any court of justice in Her Majesty's dominions, such court shall hear and try the case as if committed within the limits of its ordinary jurisdiction (18 & 19 Vict. c. 91, s. 21).

The English courts have no jurisdiction at *common law* over offences committed on board foreign ships, although within three miles of English coast (*R.* v. *Keyn*) ; such matters are provided for by the Territorial Waters Jurisdiction Act, 1878.

Metropolitan Police.—The Metropolitan Police have authority as constables within the counties of Middlesex (including city of London), Surrey, Hertfordshire, Essex, Kent, Berkshire, and Buckinghamshire ; and

(*f*) Measured as the crow flies. *Stokes* v. *Grissall*.

upon the Thames within or adjoining thereto, as well as within the royal palaces of Her Majesty and two miles thereof.

The Metropolitan Police was first established in 1829 by the Statute 10 Geo. 4, c. 44, but it was not until 2 & 3 Vict. c. 47, that it assumed its present functions. The force consists of 14,000 men.

The City of London Police number 894 men.

Police and Criminal Statistics.—The police in boroughs number upwards of 10,000; in counties, 12,000. The total police force of the country is 37,957. The cost per man averages 98*l.*, or taking pay alone 77*l.*

Thirty-one thousand persons are returned as belonging to the criminal classes and "at large," 13,000 are incarcerated in local prisons, 5,000 in convict prisons, and 4,000 in reformatories.

Summary.

The following is a summary of the principal crimes and offences for which a constable can arrest *without* warrant :—

Offences against the Person (*g*).—Such as murder, rape, bigamy bestiality.

Offences against Property.—Robbery, burglary, larcenies generally, embezzlement, fraud, etc.

[*In all cases of fraud, however, the constable will do well to protect himself by the warrant of a justice.*]

Malicious Injuries.—Arson, injuries to houses, goods, trees, fences, etc., killing or maiming cattle.

Forgery and offences against the Coinage.

Offences against Penal Servitude and Prevention of Crimes Act, and for crimes of Treason, Smuggling, Conspiracy, Night poaching, etc.

The following persons are liable to arrest without warrant :—Deserters, unlicensed pedlars, suspected persons found "loitering" at night in yard or highway (*h*), offenders against Vagrant Act (*i*), and persons committing breaches of the peace.

Also persons obstructing constable in execution of duty.

As to treatment and custody of Prisoners, see Chap. III., p. 16, *post*.

Note.—Members of constabulary should always bear in mind that they are a preventive as well as a repressive force—that the prevention of crime is of even greater importance than the punishment of criminals, and that their ceaseless endeavours for this end may operate quite as useful'y in maintaining the peace of the country, and infusing into the community a confidence in their vigilant guardianship of person and property, as their most strenuous and successful efforts for the detection and arrest of offenders.

(*g*) The crimes enumerated are treated of in Criminal Law Consolidation Acts. See Appendix.

(*h*) 24 & 25 Vict. c. 96, s. 104; c. 97, s. 57; c. 100, s. 66. See Appendix.

(*i*) See title VAGRANT ACT (General Subjects), *post*.

CHAPTER II.—POLICE DUTIES.

A CONSTABLE on joining his station should set himself to acquire a knowledge of every street, road, and public place in the town or district in which he is located. He should next acquire a knowledge of the appearance and character of the inhabitants. He should be most civil and courteous, and endeavour, so far as he can consistently with his duty, to make himself popular with all classes. He should make himself well acquainted with the persons and haunts of the criminal class (convicts on licence, habitual convicts, thieves, etc.), in order to be able to bring them forward without delay in the event of their being charged with the commission of any crime: he should, however, act kindly towards such persons, and endeavour by advice and encouragement to induce them to abandon crime and live honestly.

See also RULES OF CONDUCT, MAXIMS, ETC. (Introduction), p. 3.

Beat and patrol duty.—The constable is responsible for the security of life and property within his beat, and the preservation of the peace and general good order. A constable on beat duty should not unnecessarily loiter or walk about in a slovenly manner. He should not enter any house except in the execution of his duty, nor engage in idle conversation. When answering any questions which may be put to him by strangers or others making inquiries he should deport himself with the utmost civility and attention.

The duties of rural divisions cannot be performed efficiently without the establishment of a proper system of patrols and conferences.

These patrols should not take place on stated nights or at particular hours, but at irregular periods constantly varied, and the opportunity should be taken to keep suspected houses and persons under observation. The duty to be performed efficiently should be performed silently.

Staff, use of.—A constable is only justified in using his staff or truncheon when he has no other means of protecting himself from injury or preventing a prisoner's escape. Where the truncheon is used blows should not be given on the head or face. A staff is a heavy weapon, and blows delivered with it on the shoulders and arms of an opponent will generally suffice to disable him.

Fires.—In all cases of fire a constable must first endeavour to save life if in danger, his subsequent efforts being directed to the saving of property. At fires a close watch should be kept on the movements of pickpockets and suspicious persons in crowd, to prevent their gaining access to the premises for purposes of theft. All information as to origin of fire should be noted so as to facilitate subsequent inquiries should arson be expected.

Sudden deaths.—Information should be sent to coroner in all cases of sudden or accidental death, or where persons are found dead or die under suspicious circumstances. The constable is bound to summon a jury (twelve to twenty persons) on receipt of the coroner's precept for inquest. See title INQUEST, *post*.

Criminal investigation.—The steps to be taken by a constable in investigating certain crimes are given in a subsequent chapter (Chap. V.). In making inquiries in criminal cases the greatest care should be paid to

details. Officers of short experience are often apt to neglect points which appear to them to be trivial and of no importance, but which may actually be of the utmost value in the subsequent conduct of the case.

The scenes of all outrages should be at once visited and the facts reported.

Statutory duties.—Special statutory duties devolve upon the police under various Acts of Parliament. The Vagrant Act, the Pedlars Act, the Highway Act, the Poaching Prevention Act (*a*), the Licensing Acts (*b*), and others. Offences under the Licensing Acts come specially under the cognizance of police. They are required to periodically visit and inspect all licensed houses within their beat or sub-division. When doing so they should on no account accept or partake of refreshment therein. Publicans are liable to severe penalties for treating constables when on duty.

As to GAMING on licensed premises, see GENERAL SUBJECTS, *post*. "Gaming is playing at any game for money or money's worth" or for drink. A lawful game is thereby rendered unlawful. No game of mere skill (*c*) is an unlawful game. Playing at any public billiard table or bagatelle board on Sundays, Christmas day or Good Friday is illegal.

PUBLIC ORDER.

Drunkenness.—Under s. 12 of the Licensing Act, 1872, persons "found drunk" on any highway or public place, whether a building or not, or on any licensed premises, shall be liable to penalties for drunkenness.

The section gives a constable no power to arrest for *simple drunkenness*; the procedure should be by summons. When a person is *drunk and incapable* a constable can detain such person until he can proceed with safety to himself, and if so detained a summons should issue. Persons drunk and "riotous" (*d*), or drunk in charge of vehicles or horses, or drunk whilst in possession of loaded firearms, should be apprehended (*e*).

Removal from premises.—A constable can *at the request of landlord* remove anyone from licensed premises, but he is not required to detain him in custody unless he himself has a charge against him.

Police can remove from any premises a person who has forcibly gained admission, or having been admitted refuses to leave when requested. No unnecessary force should be used.

Railways.—The railway authorities have power to deal with drunken persons or trespassers on their premises or platforms. The police should

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(*a*) The police have no duties to discharge under the Game Laws which are put into operation by private individuals and the excise. See title POACHING (General Subjects), *post*.

(*b*) For detail of duties under statutes, see title LICENSING (General Subjects), *post*.

(*c*) Skittles, cards, dominoes, chess, draughts, etc. are not unlawful except played for money or money's worth.

(*d*) "Riotous" means noisy, turbulent, or uproarious conduct.

(*e*) The practice as to apprehension of persons found drunk varies much. The Home Secretary has advised the police not to apprehend when the drunken person is not incapable, but to apprehend a drunken person who is incapable and detain him till brought before a justice or released on bail. As to BAIL BY POLICE OFFICER, see p. 20, *post*.

interfere if a breach of the peace is imminent, and then take into their charge persons handed over.

Military.—When soldiers are drunk but not riotous the police should inform the guard at the military barracks, or the regimental patrol, and request that they may be taken in charge. When soldiers are quarrelling notice should be at once sent to the military authorities, the constable remaining on the spot till assistance arrives. The police should at once interfere if life be in danger or civilians concerned. If soldiers are guilty of any direct breach of the law they should be arrested like other offenders, and if once placed in cells should be treated as in the case of civilians. See ARMY ACT (General Subjects), *post*, also titles BILLETING, DESERTERS, BASTARDY, etc

Note.—No process whatever under any Act or at common law in any proceeding mentioned in s. 145 of the Army Act, shall be valid against a soldier of the regular forces *if served after such soldier is under orders for service beyond the seas*. See ARMY ACT (General Subjects), *post*.

Deserted children.—If deserted children be found by the constabulary they should be taken to the union. If found by a private person a description of the child should be taken, and the person finding it should be directed to the union and informed that he is accountable for its safe delivery there. See CHILDREN (General Subjects), *post*.

Police are required to afford assistance at their courts to Revising Barristers, Commissioners of Fisheries, Coroners, etc., and to Sheriffs' Officers, and Bailiffs acting under a proper writ or authority.

SERVICE OF SUMMONSES.

The procedure as to issue and service of summonses is laid down in the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 42). See Chap. IV., *post*, p. 19.

A summons is an order signed by a magistrate. It is issued in duplicate, one portion, that signed by the justice, being called "the original," the other "the copy."

A police officer on receiving a summons to serve will carefully compare the original with the copy, so as to be able to swear it was a "true copy" he received. He will serve the copy and keep the original, on which he will endorse the date and manner of service.

Service.—The summons should (unless it contain instructions to the contrary) be served *personally* on the party to whom it is directed (*f*) as soon as possible, but so (if it be practicable) that three clear days may elapse between the service and the date of hearing. If the service of the summons personally cannot be accomplished, it will in most cases be sufficient to leave the copy at the usual place of abode of the person to whom it is addressed. In such case the summons must be left with some inmate of the house over the age of sixteen years. The nature of the summons should be explained to such person, and the constable or officer should make a note of the name of such person, and the degree of relationship (if any) to the person summoned. By decision in *R.* v. *William Smith*, justices have no jurisdiction to convict *ex parte* in absence of defendant, unless satisfied that the summons has been brought to his notice (10 L. R. Q. B. 608 ; 39 J. P. 292—322).

In no case can a summons be served by the complainant himself.

(*f*) Bastardy summons must be served *six clear days* before the hearing.

Endorsement.—After service the officer or constable should endorse, viz., write upon the back of the original summons in his possession, the day of the month the service took place, whether it was personal or by leaving it, and if so, with whom and where.

Proof.—The officer or constable will attend the hearing of the case at petty sessions to prove the service if necessary. If a person fails to appear in answer to a summons, a warrant may be issued to compel his appearance. See WARRANTS, *post*.

Where several summonses have to be served in a petty sessional division, it is desirable, if possible, to employ one constable to serve them, and thus avoid the attendance of several constables at one petty sessions. Section 41 of the Summary Jurisdiction Act, 1879, provides for proof of service by declaration.

Service of "orders."—An order is served *personally* and proved similarly to a summons; a copy is delivered to the party concerned and the *original order* is kept.

In giving evidence a constable should ever bear in mind the solemn obligation imposed upon him by his oath not only to speak the truth, but "the whole truth." He should never depose to words or facts which he has not heard or seen himself, or add a colour to his evidence by word, tone, or action. He should never hesitate to answer questions which may be favourable to the prisoner. A police officer should never express any opinion as to the guilt or innocence of a prisoner. The question of conviction or acquittal should in nowise influence the constable. Having laid before the magistrates all the available evidence calculated to throw light on the case, a policeman's duty is discharged.

Constables are often subjected to severe cross-examination by counsel for the defence, who sometimes comment unfavourably on the constable's conduct in the case, or infer the statements made are untrue. Constables should in such cases keep their tempers, and answer respectfully and quietly, keeping nothing back, even though it may be unfavourable to them. If a constable has spoken the truth, and the *whole* truth, he has no need to feel nervous under cross-examination.

Constables can make notes regarding cases at the time they occur, or immediately afterwards. They may refresh their memories by referring to their notes before entering the witness-box. Should they refer to them *in the witness-box* the notes may have to be handed in. A constable may, before a case comes on at the trial, ask to read over his depositions.

Where prisoners have made confessions or statements, the *exact words* used by them should be given in evidence. Disgusting and filthy language should not be repeated unless the witness is specially called upon to state the exact words made use of. See Chap. VI., *post*, pp. 40, 41.

A constable when giving evidence should maintain a quiet and grave demeanor, and not give way to unseemly mirth, however ludicrous the subject.

ACTION AGAINST POLICE.

Liability.—Constables render themselves liable to fine or imprisonment for neglect or violation (*g*) of duty under the Police Acts and under special

(*g*) In *Chisholm* v. *Holland* it was held that where a constable took from an innkeeper 1*s*. 6*d*. above the licensing fee as a gratuity there was sufficient evidence of "violation of duty": 50 J. P. 197.

Acts under which they have powers, etc., as the Vagrant Act. They may either be proceeded against criminally, if they have used undue violence, as, for instance, in carrying out an arrest, or an action may be brought against them, *i.e.*, for false imprisonment. No action can, however, be brought against them for any act done in the execution of their duty, unless it be commenced within *six months* from the doing of such act, and one month's notice of such action be given to the defendant (24 Geo. 2, c. 44, s. 8, and 5 & 6 Vict. c. 97 (*h*)).

Expenses of actions, etc.—In a case *Stopps* v. *Justices of Northamptonshire*, 51 J. P. 756, tried in the Queen's Bench Division, the court quashed an order made by county justices for payment of damages recovered in an action against a constable for arrest and false imprisonment supposed to be in the course of duty, but which afterwards turned out to be unlawful. To support such an order the court held that it must be proved—(1) That the arrest was ordered by the justices. (2) That it was reasonably and properly done in the interest and for the benefit of the county.

But a section (66) of the Local Government Act, 1888, now provides that all costs incurred by any justice of the peace or constable in defending any legal proceedings taken against him in respect of any order made or act done *in the execution of his duty* shall to such amount as shall be sanctioned by the standing joint committee of the county council and quarter sessions be paid out of the county fund of the county.

Protection of constables.—Constables are protected in the duties of their office by the provisions of various Acts of Parliament. Under s. 38 of 24 & 25 Vict. c. 100, it is a misdemeanor to assault, resist, or wilfully obstruct any police officer. Under the Prevention of Crimes Act, 1871, persons assaulting the police are liable to a penalty of 20*l*., or six months' imprisonment; under 48 & 49 Vict. c. 75, they are liable for "resisting or obstructing" to fine of 5*l*. or two months' imprisonment. See PREVENTION OF CRIMES ACT (General Subjects), *post*. Persons are also liable to penalties under the Municipal Corporations Act, 1882, c. 50.

EMPLOYMENT.

Constables are restrained from employing themselves in any office or employment for gain or hire.

(*h*) Constables are not entitled to notice of action pursuant to 1 & 2 Will. 4, c. 41, s. 19, and 2 & 3 Vict. c. 93, s. 18, when acting under later Acts, these statutes not extending to future statutes unless expressly so extended by the later Act: *Bryson* v. *Russell*, 51 L. J. Q. B. 144; 49 J. P. 293.

CHAPTER III.—PRISONERS.

When a constable suspects a person of committing an offence, it may be necessary for him to put certain questions to ascertain whether he will be justified in apprehending him, *but the moment he is so satisfied* he has no right to *further question* the suspected person.

Questions.—In cases of arrest by warrant, or when a constable is about to arrest a person or has a prisoner in custody, he has no right to question such person touching the crime of which he is accused. The following is the effect of observations on the subject made by the late Lord Chief Justice Cockburn at the Central Criminal Court, July 16th, 1870: "You may ask a man questions with an honest intention to elicit the truth and to ascertain whether there are grounds for apprehending him, *but with a foregone intention of arresting him* to ask questions for the main purpose of *getting anything out of him* that may be afterwards used against him is a very improper proceeding."

Cautioning.—Various opinions exist as to whether it is incumbent on a constable to "caution" a person in custody on a criminal charge against saying anything that may criminate him, by informing him that it will be given in evidence against him. Judicial opinions have been given both in favour of and against such a practice.

Any *voluntary* statement a prisoner may wish to make should be carefully listened to and written down as soon as possible. In such cases it is desirable to "caution" the prisoner. See also Chap. VI., *post*, p. 36.

Confessions.—Constables must carefully avoid holding out to any prisoner any promise, or endeavouring by threat or any other means to extract from them any *confession*.

In the Yeovil murder case (Somerset Spring Assizes, 1877), a superintendent of police stated he had a conversation with the prisoner, and asked him if he could account for himself on the Thursday night. The Lord Chief Justice is reported to have told the superintendent "the law did not allow a man under suspicion and about to be apprehended to be interrogated at all; a judge, magistrate, or jury could not do it, and it was a very great mistake to do so in this instance": 41 J. P. 187. See also Evidence, Chap. VI., *post*.

Searching.—The right of searching persons in custody must depend on the circumstances of each particular case, and the mere fact of a person being drunk and disorderly will not justify a police officer searching his person, although the officer may have received general orders to search all persons in custody; but any person, whatever may be the nature of the charge, may so conduct himself by reason of violence of language or conduct that it may be prudent and right to search him, as well for his own protection as for those entrusted with the duty (Stone's Justices' Manual).

Lord Campbell held (in the case *Bessell* v. *Wilson*, 20 L. T. 233), that it would be the duty of a magistrate to direct a search in case of a person arrested for felony, in order to ascertain if there were any instruments in his possession with which he might have been engaged in the violation of the law. It might be often highly salutary that persons so apprehended should be searched.

When prisoners are searched the search should, if possible, be made in the presence of a witness. Female prisoners should be searched by some respectable woman, and when practicable in the presence of a second female (*a*).

A list should be kept and proper entry made in official books of property found on prisoners, and a receipt should be taken for same when returned or when handed over to prison authorities.

As to restitution of property, see RESTITUTION (General Subjects), *post*.

IDENTIFICATION OF STOLEN PROPERTY AND PERSONS.

Regarding the identification of stolen property recovered, it will (where the nature of the article admits) materially strengthen the identification if the article to be identified be placed among others of a similar character and the owner then asked to point out his own property.

In the identification of individuals, the person to be identified should be placed amongst others of his own height and appearance, and of his own position in life.

Handcuffs.—A constable should always be able to show "good special reasons" (*b*) for handcuffing *unconvicted* persons. Cases have occurred where actions have been maintained against the police for handcuffing persons in custody, arrested on suspicion, who were subsequently acquitted of the charge preferred against them. Where the prisoner is a man of notoriously bad character, or violent, or dangerous, or where he threatens or assaults the constable or attempts to escape, or where the constable, having two or more prisoners in charge, is unable otherwise to secure their safety, or in cases where the offence is of a very serious nature, the constable would be justified in handcuffing a prisoner. In the absence of such reasonable grounds, prisoners charged with drunkenness and such trivial crimes should not be handcuffed. As, however, the escape of a prisoner may demand the dismissal of the officer, it behoves the police to be vigilant in discharge of their duty when on escort. Females or old or infirm persons should not be handcuffed (*c*).

Disposal of prisoner.—A person arrested by the constabulary should be taken immediately to the lock-up of the station or district, and conveyed as soon as possible before the nearest magistrate.

If a rescue be apprehended, or if the party arrested be sick, the constable may keep him for the time in a house or other place of security.

Having effected an arrest, the constable has no power to deal with a prisoner (beyond providing for safe custody) otherwise than by taking him before a magistrate as soon as he reasonably can. He has no personal power of discharging a prisoner (except in the case of wrongful custody of an entirely innocent person, when further detention would be illegal), but

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(*a*) See CONCEALMENT OF BIRTH (General Subjects), *post*; also ASSAULTS, *post*.

(*b*) See *Wright* v. *Court*, 4 B. & C. 596. In *Norman* v. *Smith*, Manchester Assizes, February, 1880, damages (15*l*.) were recovered for handcuffing a prisoner in custody under a warrant for perjury.

(*c*) Prisoners should be handcuffed with the arms across the front of the body, not with the hands palm to palm.

having taken a suspected party into custody he must—except in certain cases where bail is to be taken—be conveyed before a magistrate as soon as possible, to be dealt with according to law. Regarding production of prisoner at a coroner's inquest, see CORONERS (General Subjects), *post*.

Prisoners are to be treated by the constabulary with the humane consideration which their situation and safety will admit of, and no harshness or unnecessary restraint is to be used towards them. Officers in charge of station should carefully examine each prisoner whom they receive before locking him up. Medical aid is to be promptly afforded to any prisoner requiring it. Cases have occurred where persons who have been arrested for drunkenness and confined in police cells have been found to be really suffering from illness or want of nourishment.

The constabulary are responsible that prisoners are supplied with proper and sufficient food while in custody. They should on no account be allowed to have beer, spirits, or intoxicating liquors, without the order of a medical man.

Note.—Imprisonment under warrant of committal means from date prisoner is received at prison. The prisoner should therefore be conveyed to prison with all possible dispatch, or the constables executing the warrant may be held liable for false imprisonment.

Expenses.—The liability to pay expenses of conveyance, etc., of prisoners *after commitment* is by the Prisons Act, 1877, transferred to the Secretary of State. If the prisoner is in possession of sufficient money to pay expenses, the committing justice may order it to be so applied (Indictable Offences Act, 1848, s. 26).

Escape of prisoner. Police officers and others negligently permitting the escape of a prisoner in custody for a criminal matter are guilty of misdemeanor, but voluntarily permitting an escape amounts to the same kind of offence and is punishable in the same degree as that of which the prisoner is guilty, and for which he is in custody, whether treason, felony or misdemeanor (1 & 2 Geo. 4, c. 88 ; 4 & 5 Will. 4, c. 67).

Prison breach is an escape by a prisoner lawfully in prison. If the person be in custody on a charge of treason or felony the offence is felony ; where he is in custody on a minor charge the offence is a misdemeanor. An actual breaking of the prison with force, and not merely a constructive breaking, must be proved. No breach of prison will amount to felony except the prisoner actually escape.

Rescue.—The statutes 35 Geo. 2, c. 37, s. 9 ; 1 & 2 Geo. 4, c. 88 : 7 Will. 4 & 1 Vict. c. 91, deal with the offence of rescue.

Bail.—The Summary Jurisdiction Act, 1879, s. 38, requires that a superintendent, inspector, or other officer of police *shall*, in certain cases, except where the offence appears to be of a serious nature, discharge the prisoner upon bail. See Chap. IV., p. 20. In cases of felony where further evidence is required the prisoner can be remanded by the magistrate for a period not exceeding eight days.

CHAPTER IV.—PROSECUTIONS.

PERSONS charged with the commission of crimes or offences are either dealt with summarily before justices acting in or out of petty sessions, or are, if charged with certain indictable offences, committed for trial on indictment at quarter sessions or assizes after preliminary inquiry held before the magistrates.

The Summary Jurisdiction Acts (1848 and 1879) set forth the procedure to be adopted. The Act of 1879 greatly enlarges and extends the powers of justices, and enables courts of summary jurisdiction to deal summarily with many cases of felony heretofore triable only on indictment. Two justices in petty sessions or one stipendiary magistrate constitutes a court of summary jurisdiction.

A complete analysis of the Acts is given in Appendix. The following sections are specially important :—

SUMMARY JURISDICTION ACT OF 1848 (11 & 12 Vict. c. 43).

Section 1, issue and service of summons.
„ 3, issue of warrants.
„ 7, summonsing of witnesses.
„ 10, informations.
„ 12, hearing of complaints.
„ 19, distress warrant.
„ 23, commitments.
„ 28 to 31, penalties.

[See also abstract of provisions under headings INDICTABLE OFFENCES, and SUMMARY JURISDICTION (General Subjects), *post.*]

SUMMARY JURISDICTION ACT OF 1879 (42 & 43 Vict. c. 49).

Power is given under s. 4 to "mitigate punishments" in certain cases, imposing fines in lieu of imprisonment.

Section 5 prescribes scale of punishments.

Unde. s. 7, justices may allow fines inflicted to be paid by instalments, and costs may be "remitted" where the fine does not exceed 5*s*. *Where this is desired police should request the court at time of hearing to remit fees.*

Sections 10 and 11 contain special provisions regarding the trial and punishment of children under twelve and of young persons for indictable offences. Males under fourteen may in addition to or in lieu of other punishment be ordered to be whipped with a birch rod by a constable *in the presence of an inspector* or officer of police of higher rank than a constable, and, if desired, in the presence of parent or guardian.

Under ss. 12 and 13 justices can deal summarily with adults charged with indictable offences.

A court of summary jurisdiction can, with the consent of the person charged, if he be an adult, deal summarily with certain indictable offences specified in the First Schedule to the Act, adjudging a fine of 20*l*. or three

months' imprisonment, in cases where value of property does not exceed 40*s*., and six months' imprisonment when property exceeds that amount, and accused pleads guilty, except in cases where the person charged is, owing to a previous conviction, liable to penal servitude. Such cases must be sent for trial (s. 14).

Under s. 16 the court can, where the offence is of a trifling nature, discharge the accused with a nominal punishment or on taking sureties for his appearance for sentence if required.

Section 20 requires that all cases *shall be heard in open court*, viz., a petty sessional court-house or an "occasional court-house," being a place specially appointed for hearing cases.

Section 21 deals with warrants of commitment and distress.

Section 37. A warrant is not void by reason of death of justice signing same.

Section 38 (BAIL) enacts that a person taken into custody for an offence without a warrant shall be brought before a court of summary jurisdiction as soon as practicable, and if such a court will not be practicable within twenty-four hours after he is taken into custody, *a superintendent or inspector of police or other officer of police* of equal or superior rank or in charge of any police station shall inquire into the case, and, except when the offence appears to be of a *serious character*, shall discharge the prisoner upon his entering into a recognizance, with or without sureties, for a reasonable amount, to appear before the court when required.

PROSECUTION OF OFFENCES ACT, 1884.

(*Public Prosecutor.*)

This Act (47 & 48 Vict. c. 58) amends 42 & 43 Vict. c. 22, which provided for the appointment of a Public Prosecuter, and is referred to as the principal Act. The new Act provides that the person for the time holding the office of solicitor to Her Majesty's Treasury shall be "Director of Public Prosecutions."

The Chief Officer of every police district in England shall from time to time give information to the Director as to the indictable offences committed within his district as required by the principal Act. As to evidence to be given in committal cases, and as to police as witnesses and "advocates," see Chap. V. (EVIDENCE), *post*.

REWARDS, RESTITUTION, ETC.

Where a reward is offered for "such information as will lead to the apprehension" of the felon a police constable to whom the felon surrenders himself is not entitled to the reward. *Bens* v. *Wakefield and Barnsley Bank*, 43 J. P. 55; also *Turner* v. *Waller*, 2 L. R. Q. B. 301.

As to corruptly taking rewards, advertising rewards, etc., see Larceny Act (ss. 101 and 102), Appendix, *post*.

See also title RESTITUTION (General Subjects), *post*.

PROSECUTOR'S EXPENSES.

By 7 Geo. 4, c. 64, s. 22, the expenses attending the prosecution of felonies are borne by the public; the committing justice signs a certificate

allowing a reasonable sum to the prosecutor, witnesses, and police for loss of time etc. In Treasury prosecutions the costs are regulated by orders made by the Secretary of State (Treasury Minute, June 29th, 1875).

Under 33 & 34 Vict. c. 23, s. 3, the court may condemn a person convicted of treason or felony to pay the costs of the prosecution out of any moneys taken from him on his apprehension.

By the Summary Jurisdiction Act, 1879, provision is made for payment of costs of indictable offences dealt with summarily.

Provision is made by s. 23 of 7 Geo. 4, c. 64, for the payment of costs in cases of misdemeanour.

Provision is also made under the Criminal Law Consolidation Acts for payments of costs of prosecution.

The court of assize or session may order a sum of money (not exceeding 5*l*. in case of the quarter sessions) to be paid to any person who may have been active in the apprehension of offenders charged with serious offences, such as murder, robbery, etc.

Under 29 & 30 Vict. c. 52, expenses incurred in the prosecution of cases of felony and certain misdemeanors, upon charges *bonâ fide* made upon reasonable and probable cause, may be allowed by justices, even though the cases are not committed for trial.

Fees.

The expenses of prosecutors and witnesses is regulated by a Table of Fees arranged by Secretary of State, and adjusted quinquennially on recommendation of justices, in accordance with the provisions of various circulars relating thereto.

H. O. Circular A. 52,256, re "Fees."

Home Office, Whitehall,
December 10*th*, 1891.

Sir,

I am directed by the Secretary of State to request that you will call the attention of the committee to s. 23 of the Police Act, 1890, which provides as follows:—

> "Every police authority may from time to time, **and shall at least once in every five years** submit for approval to a Secretary of State a table of fees payable to constables in respect of the service of summonses, the execution of warrants, and the performance of other occasional duties which may be required of the constables under that authority, and in respect of the performance of any other act done by constables in the execution of their duty, and the Secretary of State may approve of the table, with or without modification."

And inform them that, difficulties having arisen with regard to the framing of tables of fees under this section, the Secretary of State desires to bring to the notice of police authorities the following points:—

1. The Secretary of State is advised by the law officers of the Crown that this section extends only to empower police authorities to fix table of *fees*, and that it is *ultra vires* to insert in such tables any provision as to the payment of expenses in addition to the fees.
2. The Secretary of State is further advised by the law officers that any provision in the table to the effect that any service for which a fee

is payable is not to be rendered until the fee is paid would be *ultra vires*. The performance of their duties by constables cannot be made dependent on their receipt of the fees.

3. The Secretary of State recommends that police authorities, in framing the tables, should either not impose any fees for the service of summonses, the execution of warrants and other duties performed by the police in *criminal cases*, or should make the fees for these services very small in amount. It appears to him that the sums usually payable by prosecutors and defendants for justices' clerks' fees in criminal cases are already sufficiently heavy, and that it is undesirable to increase them by the addition of police fees; and as the pension fund now receives a large subvention from the Government and is guaranteed by the police fund, it cannot be prejudiced by any diminution of this source of income.

   The Secretary of State has therefore decided that he himself, as police authority for the metropolis, will not impose any police fees in criminal cases arising within the metropolitan police district; and in dealing with tables submitted to him by other police authorites, he will be prepared to sanction only such fees as are moderate in amount and not in excess of those previously imposed by the same police authority or by the authorities in adjoining police areas.

4. The table under s. 23 should not contain the charges made to private persons or public bodies for constables whose services are lent to them in consideration of payment. These services will not be paid by fees, but will be charged for by the police authority at rates fixed with reference to the cost of the pay, clothing, etc., of the police employed and including a fair contribution to the pension fund: Police Act, s. 16 (1) (*c*).

I am, Sir,

Your obedient servant,

GODFREY LUSHINGTON.

EXPENSES OF PROSECUTORS AND WITNESSES.

The following (*abridgement* of) Rules as to the "costs allowed for prosecutors and witnesses" were issued by Her Majesty's Secretary of State for the Home Department on the 9th day of February, 1858:—

PROSECUTORS AND WITNESSES.

For Attendance before the Examining Magistrates.

There may be allowed to prosecutors or witnesses, being members of legal or medical profession, if resident in the town or place where the examination is taken, or within two miles thereof, for their loss of time in attending to give professional evidence, but not otherwise, a sum (at discretion of magistrates) not exceeding 10*s*. 6*d*. for each attendance.

If prosecutor or witness reside elsewhere 1*l*. 1*s*. can be allowed.

For mileage (each way), 3*d*.

To prosecutors and witnesses not hereinbefore provided for residents in the town or place where the examination is taken, or within two miles, for their trouble and loss in so attending, a sum for each day not to exceed 1*s*.

If resident elsewhere and beyond the distance of two miles, or if necessarily detained from home more than four hours, a sum not to exceed 1*s.* 6*d.*

If detained from home for six hours, a sum of 2*s.* 6*d.*

If obliged to sleep from home, 2*s.* 6*d.* per night.

There may be allowed for "mileage" as follows :—

If resident more than two miles from court, second class railway fare, and for journey otherwise than by rail, 3*d.* per mile, each way.

Allowances for attendance at assizes, quarter sessions, etc., under 7 Geo. 4, and other Acts.

To prosecutors and witnesses, being members of legal or medical profession, attending to give professional evidence, but not otherwise, for their expenses, a sum not to exceed 1*l.* 1*s.* for each day.

For each night the same as ordinary witnesses, and for mileage a sum not to exceed, per mile, each way, 3*d.*

To prosecutors and witnesses not hereinbefore provided for, there may be allowed for their expenses a sum not to exceed 3*s.* 6*d.* per day.

To the same, if entitled to mileage, for each night detained from home at assizes, a sum not to exceed 2*s.* 6*d.*

To the same for each night detained at sessions, 2*s.*; and for mileage, as follows :—

If resident more than two miles from the court where the prosecution takes place, if the whole or any portion of the journey can be performed by rail, second class railway fare, and for journey otherwise than by rail, 3*d.* per mile, each way.

In computing the amount for mileage no greater allowance is to be made than at the rate of 3*d.* per mile, each way, by the nearest available route.

No prosecutor or witness, allowed for mileage, shall be allowed for loss of time occasioned by omission to avail himself or herself of a public conveyance.

No prosecutor or witness to be allowed expenses in more than one case on the same day.

Exceptions.

Illness.—In case of the illness or inability of any prosecutor or witness to travel without some special means of conveyance, the court may depart from the foregoing rates, and make such other allowance as the justice of the case shall require.

Attorneys.—The following payments to be made to attorneys for the prosecution, giving evidence, over and above the allowances made to them as attorneys :—

A sum not exceeding 6*s.* 8*d.*

Scientific persons.—And whereas it may become necessary that scientific persons (unacquainted with the facts) may be required for opinion upon matters of science in issue, the court before whom such persons may be examined may direct such allowances as appear reasonable. [Amended, see p. 25.]

Interpreter.—Whenever an interpreter shall be employed by prosecution the court may make such allowance as to such court shall seem reasonable.

Note.—Under the head of exceptions, a departure, from the rules and regulations herein contained is authorized under certain circumstances, except only in the case of an attorney for the prosecution giving evidence.

Constables and Gaolers.

Attendance before the Examining Magistrates.

To prosecutors and witnesses being constables attending the bench of magistrates on any police duty, if constables paid by salary, and attending from a distance not more than three miles, allowance, *nil.*

(Unless the magistrates certify that there were special reasons for making an allowance, when a sum not exceeding 1*s.* for each day may be allowed.)

To prosecutors and witnesses being constables paid by salary and not attending the bench of magistrates on any police duty, for their trouble in attending such examination, from a distance beyond three miles and under seven miles, allowance, 1*s.*

To the same if attending from a distance greater than seven miles, 1*s.* 6*d.* per day.

To prosecutors and witnesses, being constables paid by salary, if necessarily detained all night, 2*s.*

(The allowances to prosecutors and witnesses being constables paid by salary are to be conditional upon the same being applicable for their personal benefit.)

To prosecutors and witnesses being constables necessarily travelling to the place of examination in discharge of any police duty there shall be allowed for mileage, *nil.*

(Unless the examining magistrates shall certify that there were special reasons for making an allowance, and then the same as other constables.)

To prosecutors and witnesses being constables not attending the place of examination in discharge of a police duty, and entitled to be conveyed under 7 & 8 Vict. c. 85, s. 12, and able to travel by railway, there shall be allowed mileage as follows :

To superintendents, inspectors, sergeants, and constables, the lowest amount per mile authorized by Act of Parliament for their conveyance.

To prosecutors and witnesses being constables able but not so entitled to travel, and not attending the place of examination on any police duty, there shall be allowed for mileage, railway fare the same as to ordinary witnesses :

To prosecutors and witnesses being constables not able to travel by railway, and not attending the magistrate or magistrates on any police duty, for every mile beyond four miles each way a sum not to exceed, each way, 2*d.*

To prosecutors and witnesses being constables able partially to travel by railway, for every mile after the first four miles, each way, in reaching such means of conveyance, and railway fare as other constables, a sum not to exceed 2*d.*

Attendance at Sessions or Assizes.

To prosecutors and witnesses being constables and paid by salary, if resident within the town or place where such court is held, or within two miles of such place, a sum, in the discretion of the court, not to exceed for each day 1*s.*

If resident elsewhere, and they attend from a greater distance than two miles, 1*s.* 6*d.* for each day.

If they shall be detained all night for purposes of prosecution, a further sum for the night not to exceed 2*s.*

If such prosecutors and witnesses shall be *chief constables or superintendents* attending from a greater distance than three miles, and detained all night for purpose of prosecution, allowances, the same as ordinary witnesses.

The allowances are to be conditional on the same being applicable to their personal benefit.

To prosecutors and witnesses being constables who shall be entitled to be conveyed under 7 & 8 Vict. c. 85, s. 12, and able to travel by railway, there may be allowed for mileage as follows :—

To superintendents, inspectors, sergeants, and police constables, the lowest amount per mile authorized by Act of Parliament for their conveyance.

To prosecutors and witnesses being constables not so entitled to travel, railway fare as to ordinary witnesses.

To the same if paid by salary, and where they are not able to travel by railway, for every mile beyond four miles each way, a sum not to exceed 2*d*.

To the same if paid by salary, when able partially to travel by railway, for every mile after the first four miles each way in reaching such means of conveyance, and railway fares as other constables, a sum not to exceed 2*d*.

No constable paid by salary to be allowed for railway fare not actually paid.

To the officer of a gaol whose duties require his attendance for giving evidence on a former conviction, a sum not to exceed 3*s*. 6*d*.

In the case of prisoners brought by writ of *habeas corpus*, or other lawful process, to give evidence for the prosecution :—

Somewhat similar allowances are authorized for governors and officers of gaols, in whose custody the prisoner is brought.

The following order has since been issued by the Secretary of State on the subject of prosecution expenses [February 14th, 1863] :—

To prosecutors and witnesses being constables and paid by salary, if they shall necessarily be detained all night for the purposes of the prosecution, a sum for the night, not to exceed at assizes, 2*s*. 6*d*. ; at sessions, 2*s*. ; instead of the sum of 2*s*. allowed by the regulation of February 9th, 1858, for detention all night at either assizes or sessions.

[Further regulations affecting gaolers.]

In lieu of the words, "And whereas it may become necessary, etc., etc., etc.," there shall be inserted the following words :—

"And whereas it may become necessary in certain cases that persons unacquainted with the facts to be given in evidence upon the prosecution may be required to attend as witnesses, in order to state their opinion on matters as to which such opinion is admissible in evidence ; and it is reasonable in such cases that the foregoing rates of allowance should be departed from, I hereby direct that the allowances to be made to such persons shall be subject to the decision of the court before which such persons may be examined, which may direct such allowances as to such court may appear reasonable."

The foregoing altered regulations shall take effect and be in force in all places where the regulations made on the 9th day of February, 1858, now are (or hereafter shall be) in force.

Given under my hand at Whitehall, this fourteenth day of February, one thousand eight hundred and sixty-three.

(Signed) G. GREY.

CHAPTER V.

CRIME AND CRIMINAL INVESTIGATION.

THE course to be taken in the investigation of crime must to a great extent be left to the discretion of the officer in charge of each particular case, and the success or otherwise of the inquiry will depend on his ability and experience.

In all serious cases of outrage the constable should at once send a messenger to inform his superior officer, he himself proceeding to the scene to make immediate inquiry. Information of the outrage should be circulated as rapidly as possible, and every endeavour made to cut off the escape of the perpetrators.

Detective duties.—Although in difficult or important cases specially trained officers are usually employed as "detectives," yet all the steps taken by a constable to detect a crime after it has been committed come under the head of "detective duties."

It is difficult to exactly define their duties—the circumstances of the case, the nature of the crime, and the class of people with whom the officer comes in contact, must guide him as to the manner of inquiry, and the course to be pursued in each particular case. A detective officer should possess intelligence, tact, and good common sense ; the faculty of obtaining information from others, and at the same time keeping his own counsel and opinions.

Information regarding crime is not unfrequently obtained from persons who themselves belong to the criminal classes. Secrecy should be observed regarding the names of these informants.

Note.—An *officer engaged* on detective duty must use every exertion, and adopt any means he legitimately can, to discover the perpetrators of crime, but in doing so he must carefully avoid in any way compromising his own position, or the credit of the service to which he belongs.

CRIMINAL INVESTIGATION.

The following preliminary steps may with advantage be adopted by constables when investigating murder, burglary, arson, or other serious crime.

Murder.—In cases of murder (*a*) the police should take possession of the dead body. The position in which it is found should be carefully noted, but the body itself should not be moved, unless public decency be offended, until it has been seen by some superior officer. A surgeon should, if practicable, be called in to examine the body, and any natural or other marks noted. The teeth and hands of deceased should be carefully examined, to see if he has grasped any skin, hair, &c., of his assailant. If the deceased

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(*a*) See also title HOMICIDE (General Subjects), *post*.

is unknown, the body should, if possible, be photographed, a careful description being taken in writing.

Notes should be made of the condition of the clothing, the position of the wound, and how and with what instrument caused; and careful search should be made for the weapon, for portions of clothing, for bullets, shot, gun-wadding, footprints, blood-stains, or anything that would assist in tracing guilt.

The *motive* for the crime should be, if possible, inquired into and ascertained—whether any one had an ill-feeling towards deceased, or was interested in his death—whether the motive was one of robbery or revenge, &c.—whether the plans for the murder were laid in such manner as to show that an intimate knowledge of the habits of the deceased was possessed by the murderer.

If any person or persons are suspected on good grounds they should be arrested, unless there is reason to believe that an immediate arrest would tend to prevent the discovery of evidence, in which case a discretion as to the time and manner of arrest may be exercised, care being taken that the suspected person do not in the meantime evade justice.

Upon the arrest of the accused, his person and clothing should be carefully searched, and his body examined for marks or wounds caused by any struggle. His clothes should be carefully examined for bloodmarks, which if found should be analysed. The accused's house, lodgings, and effects should be searched for weapons, documents, stained clothing, &c.

If the case be one of *poisoning*, search should be made for bottles, boxes, powders, &c., which should be seized, and all evacuations by vomit, &c., of the deceased should be taken possession of, put into clean vessels, and sealed for analysis.

In all cases of murder the greatest attention should be paid to details and the most careful memoranda made. Regarding "Dying declarations," see p. 39, *post*.

Arson.—A fire may originate in one of two ways: either accidentally or by the act of an incendiary. "Arson" is the malicious and wilful setting fire to any building, etc. In cases of arson it will generally be found that the incendiary, viz., the person setting fire to the house or property, bore some malice or ill-will to the owner, although cases of incendiary fire sometimes occur where stacks of corn, &c., are set on fire by persons bearing no ill-will to the proprietor, but actuated merely by wantonness and mischief. Occasionally cases occur in which persons in needy circumstances set fire to their own property in order to gain the amount of money for which it is insured, and which in such cases is usually beyond the value of the property insured.

See also title ARSON (General Subjects), *post*.

In all cases of fire a constable must first endeavour to save life if in danger, his subsequent efforts being directed to the saving of property. In cases of fire a close watch should be kept on the movement of pickpockets and any suspicious persons observed in the crowd, and care should be taken to prevent their gaining access to the premises for the purpose of carrying off any portable property.

Burglary and Housebreaking.—In cases of burglary (*b*) or housebreaking special notice should be taken of the manner in which an entrance has been effected, with a view to ascertaining whether the outrage has been

(*b*) See also title BURGLARY, *post*.

perpetrated by persons acquainted with the place or by strangers. Inquiry should be made at public-houses, railway stations, etc., to ascertain whether any suspicious persons have been seen about. An accurate description of the articles stolen should be taken and at once circulated, copies being sent to the police in neighbouring towns for their information and for the information of pawnbrokers and others.

Careful search should be made of all adjoining premises, out-houses, sheds, etc., for traces of the thieves or of the stolen property.

Police approaching a house in which burglars are supposed to be should first make sure that the retreat of the thieves is cut off before they enter.

The ground under the windows and around the house should be closely examined, and if footmarks be found they should be measured and securely covered with boards, or other means of protection, in order to preserve them.

Footmarks.—In comparing footmarks it should be borne in mind that the comparison is *not* to be made by placing the boot or shoe *over* the footmark which has been discovered, but by making a *new impression* by the side of it.

The impression should also be made with the boots or shoes of both feet, and several of those comparisons should be made, and if possible in the presence of witnesses, the corresponding peculiarities of the boots or shoes with the footmarks discovered and not with the impressions made should be pointed out and immediately committed to paper. A model may be taken of a footmark by running plaster of Paris into it and allowing to set (*a*).

The impressions taken may be employed to assist in these examinations, but *the footmarks which are found* can alone be adduced in evidence, and with these only should the comparison be made. A mere similarity in the sole of a boot or shoe with a footmark is of little or no value in evidence. A striking peculiarity must be detected to render such resemblance valid, such as the loss of a nail or nails, of a plate or piece of a plate, or some other peculiarity or corresponding irregularity, which may identify beyond a doubt the footmarks with the boots or shoes compared with them.

Cattle or sheep stealing.—In these cases careful search should be made not only for the *track* of the animals, but also for the *footprints* of the person who drove them; also for wheel-tracks at gateways, gaps at hedges, etc., and the bushes and fences near gaps should be examined for traces of wool or hair. Inquiry should be made in butchers' shop, tan-yards, wool-staplers, and at railway and canal stations, and the police in any neighbouring town where a fair or market is being held should be at once communicated with.

Fowl stealing. As this description of property is frequently hidden by the thieves in adjoining fields or premises, and subsequently removed, careful search should be made for footprints and tracks of cart-wheels; also for traces of feathers or dead fowl. Should property so hidden be discovered it should on no account be removed, but carefully watched. Persons observed carrying bags or bundles at night or during the early hours of the morning should be watched. If circumstances warrant it they may be stopped and questioned, and the bags or bundles examined.

Pickpockets.—The movements of pickpockets at races, fairs, etc., should be closely watched by the police. The officers employed on this duty should wear plain clothes.

(*a*) Special instructions *re* "Castings" are issued by Home Office. As to "Identification" of persons and property, see p. 17, *ante*.

Pickpockets usually act in concert, some of the party surrounding and jostling the victim, and thus distracting his attention while the property is taken. The watch, purse, etc., stolen is immediately transferred to a confederate.

Uttering counterfeit coin.—The offence of uttering counterfeit coin is an indictable misdemeanor, but where a person *previously* convicted again commits the offence he is guilty of *felony*. Efforts should be made to obtain possession of the coins tendered or uttered. They should be marked so that they can afterwards be identified. The offenders should be at once apprehended and immediately searched to ascertain if they have any other coins in their possession. Where proceedings are instituted the Mint should be communicated with.

See title COIN (General Subjects), *post*.

Bigamy.—In investigating a case of bigamy the constable should obtain evidence on the following points:—(1.) The two marriages—it is immaterial whether both marriages took place in this country or in a foreign country. (2.) The identity of the parties. (3.) That the first wife was alive at the time the second marriage was solemnized. (4.) And if the first wife has been absent for seven years, that the accused knew she was alive. The first wife is not a competent witness to prove any part of the case either for or against her husband upon the charge of bigamy. As a rule, a warrant should be obtained before arrest is made.

See also title BIGAMY (General Subjects), *post*.

Rape, etc.—In cases of rape, the constable should arrest the person charged, and bring him and the woman before a magistrate, and also without delay, *if she consent*, have her person examined by a doctor. *This examination cannot be made without her consent.*

The following circumstances support the testimony of the woman ravished:—Her credibility; good fame; marks of violence on her person; discovering the offence without delay and looking for the offender; if party accused has fled.

The following circumstances weaken her testimony:—Evil fame; concealing the injury; if place of offence was where she might have been heard, and she made no outcry.

See also title RAPE (General Subjects), *post*.

As to assaults on children, see title WOMEN AND GIRLS (General Subjects), *post*.

In such cases the child's person should at once be examined by a doctor, *if her parents consent*. The fact of the child have complained of the injury recently after it was received is confirmatory evidence. It is desirable, in order to render her evidence credible, that there should be some concurrent testimony of time, place, and circumstances. These points should, therefore, be attended to in the inquiry.

Concealment of birth.—This is an indictable misdemeanour. It is necessary to prove that the accused was delivered of a child. A dead body must be found and identified as the child of which the woman is alleged to have been delivered. It is also necessary to show that there was a "secret disposition" of the body. In cases of concealment of birth it is most important that the supposed mother should be examined by a doctor if a magistrate so directs and *that she consents*, but not otherwise. It would be

a criminal assault to examine the woman's person without her consent. The state of her bedding, etc., may furnish evidence of the woman having given birth to a child without such personal examination. During her illness the woman should not be charged until a doctor certifies that it may be done with safety.

Where bodies of infants are found, the clothing or covering on the bodies should be carefully preserved and examined for any sign of identity. A medical examination should be made of the body to ascertain whether the child was born alive, and, if so, by what means it died.

The denial of the birth does not constitute the offence; *the woman* (or any person aiding her, who is equally guilty) *must have done some act constituting a "secret disposition of the body" after the child was dead.* The police should act with extreme caution in cases of concealment of birth, so as not to cruelly outrage the feelings of a person innocent of a criminal offence who may, however, in other respects be unfortunate.

It should be remembered that, the offence being a *misdemeanor*, a warrant should be obtained before making an arrest.

There is no authority to order surgical examination of a woman's person.

See also title CONCEALMENT OF BIRTH (General Subjects), *post.*

Threatening Letter.—The necessary steps to be taken in a threatening letter case is to ascertain who is the most likely person to send the letter; to obtain evidence, if possible, to prove the *sending*; to obtain proof of the handwriting, which, along with other circumstances, may prove the guilt of the offender. The sending or delivery of the letter need not be immediately by the offender to the prosecutor; if it be proved to be sent or delivered by the offender's means and directions it is sufficient. The envelope in which the threatening letter was received should be carefully preserved.

See also title THREATENING LETTER (General Subjects), *post.*

When a threatening letter or any documents which may afterwards be required in evidence is given to a police officer, he should at once enter his initials and the date on the back for the purpose of subsequent identification, but should be careful not to make any mark on the face or written part of the document.

DEVICES OF CRIMINALS.

(*Extract.*)—The following information, which is found in the original edition of Snowden's Police Guide, although antiquated and to a great extent obsolete, contains some useful hints as to various methods adopted by thieves and swindlers in the perpetration of crime, etc.:—

The tools used and required for housebreaking are a "darkey" (lantern), a crowbar, a centre-bit, keys, skeletons, picklocks, saws, lucifers, knife, pistol, nux vomica, or prussic acid, the use of which I will shortly describe. The "darkey" is often made with two small holes in the bottom to admit of air, being much safer from observation than a covered ventilator at the top, which sometimes emits a stream of light therefrom, and consequently attracts attention. The crowbar is made with one end like a chisel, and the other curved; its use is to force an entrance by wrenching open doors, drawers, boxes, etc. In forcing open drawers, a piece of cloth is thrown over them, which in a great measure prevents the noise. The centre-bit is a very essential engine in what is termed "panelling," or boring holes in a door with great expedition, when the burglar, by applying

a pocket-knife from hole to hole, takes out the panel, and either opens the lock or puts in a boy, who admits the remainder of the burglars; this is seldom resorted to, and never where the burglar can work with his keys and picklocks. The great object with the thief is, besides obtaining the booty, to give or leave no trace of the property stolen, and whenever opportunity offers, to lock the door again with the skeleton or keys. I had a case of this description on my hands very recently. It was a regularly planted burglary, and on the first examination of the premises no trace appeared to have been left to show either the ingress or the egress of the thieves, the doors all being found fast as usual; but on removing the lock of the outer door I found part of a skeleton key recently broken and left in the lock. This at once showed the manner in which the premises had been entered. There were still two other locks before the thief could arrive at the booty, one of which had been opened by a picklock, or skeleton key, the other was forced by a sort of crowbar.

The saw is seldom or never used except in cracking the house of a person who perhaps has gone to chapel or some other place, leaving the house empty, and where the lock or bolt is found to be so strong as not to be forced with a crowbar. A hole is then bored near the lock with a centre-bit; the saw, which is called a key-hole saw, from the narrowness of it, is then introduced, and the piece of the door on which the lock is fixed is cut out. A pocket knife is always carried, and answers more purposes than one—in cases of emergency prevents tales being told. Pistols are often taken more for ornament than use, with burglars. Nux vomica and prussic acid are chiefly made use of to destroy animals of the noisy tribe, the worst of which to keep quiet is a little half-bred terrier of the feminine gender.

A regularly planted burglary, and committed by thieves who have arrived at the top of their profession, is very bad to make out. A burglary is not the impulse of the moment, but the greatest circumspection is used. A great deal of time has been employed before the burglar determined on his method of entry, and more so when it is not a put-up robbery. Many errands and other calls have been made at the house by confederates, such as hawkers and pedlars, etc.; perhaps a cast is obtained from the key by being pressed into a piece of common soap. Soap is frequently used to conceal articles, as rings, diamonds, coins, etc., which are pressed into a piece of common soap left in its usual place on the washing-stand or table.

Starring the glaze is practised where valuable articles are exposed at the window, such as watches, jewellery, etc. It is generally performed by a party of two or three, who endeavour to divert attention; one of these is sometimes a female; but thieves do not often trust to their jomers (girls), though a woman can hide the person who stars with her petticoats better than a man. Sometimes a diamond is made use of, or occasionally a small penknife is inserted through the putty near the corner of a pane of glass, for the purpose of cracking it; the wet finger is then applied, which carries the crack in any direction required, generally in the shape of an angle. The piece is wrought to and fro and removed; the hand is then introduced, or a wire hook, according to the nature of the goods inside.

Spanking the glaze is done by one of the well-dressed thieves, accompanied by a shabbily-dressed thief who appears to be a stranger and meets by chance. The thief affects intoxication, runs against the swell gentleman, and between them they break the bottom square of glass.

The shopkeeper runs out; the swell asserts how he has been treated by that infamous drunkard; and if no policeman is at hand insists on having one sent for: but if one be within sight contrives to enter the shop, buys, perhaps, something of trifling value, throws down a remuneration for the window, "although that drunken vagabond broke it; he can better afford to pay than the shopkeeper can to lose it;" holds out threats that he will have him before his worship the mayor, if he can only make him out: bows, scrapes, and bids good-bye. A watch is then placed upon the shop to give information when the window is repaired: the putty being soft can be removed at pleasure; sometimes a small piece of leather containing a little pitch is applied to the glass to prevent it falling, *or a little treacle to coarse paper.* There is also a method to soften putty in a very short space of time by a chemical preparation, perhaps better not to name here.

Shop-bouncing is performed in various ways, but generally by two, who walk into a country shop where there is an old woman and a candle, buy some trifling article, drop a sixpence, get the old woman to bring the candle round to look for it, while the other fellow is filling his pockets with everything he can secrete. At other times this is performed early in the morning, and by one person, the shop having been planted previously, the thief having ascertained that the shop only contained one boy, or assistant, and the master; he, therefore, watching his opportunity, enters the shop, makes a small purchase, tenders perhaps a half-a-crown or a crown piece, the boy goes to his master or some other place to obtain change, and even, in some instances, requests the thief to look to the shop during his absence, which injunction is complied with to the very letter, the thief of course taking no more than he can carry.

Pocket-picking is sometimes done with a wire instrument, made almost like wire for extracting corks out of the inside of bottles; it has three hooks at the bottom, all turned inwards, with a spring on the top. When the thief thinks he has got hold of his booty he touches the spring, and the hooks close like a crab's claw.

Shirt pins and pins from a stock, etc., are drawn out by the little finger under the hand.

An old thief does not alter his dress for some time after he has had a lucky hit, for fear of suspicion.

Quack doctors are fellows who drop bills at people's houses, and vend their wares at markets and fares. They are generally composed of worthless ingredients. One fellow once, when in a state of intoxication, declared he would poison no person, for he never gave the patient anything but salts and water with a little senna tea. Another sold vegetable pills composed of the most filthy materials, mixed in a box with a little flour or meal.

Cadger screeving is a system of marking on the flags with chalk short sentences, such as the following:—"Hunger is a sharp thorn, and biteth keen." "I cannot get work, and to beg I am ashamed." Men sometimes make five or six shillings a day at this work.

Palmers are a set of fellows who generally go by twos, sometimes well dressed, and enter a shop; if a small one, one of the two keeps the shopkeeper "in a line," asking prices, or requiring a match for a pattern he (the thief) holds in his hand, whilst the other is palming his articles under his hand, and from thence to his pocket. Sometimes a well-dressed woman enters the shop, apparently a stranger to the men already in, who receives the property from the palmer, and contrives to walk out, stating

that she will call again in a few minutes; she is only going to Mr. So-and-so. "Does he not live in such a street?" The obliging shopkeeper does not keep his eyes on the men at the time he is giving her the necessary directions, and they are palming all they can lay hands on.

Others of the lower class of palmers visit shops in the rural districts, pretending to collect harp halfpence, or lion shillings, offering more than their value, to induce the unsuspecting shopkeeper to seek them out; and when they are silly enough to empty a large quantity of copper or silver on their counters to search, the palmer is sure to assist and conceal as many as he can, and whenever he takes his hand from the copper or silver he always holds his fingers out straight to deceive the shopkeeper; by this alone sums from twenty to thirty shillings are made in a day.

Swindling Tricks.

The confidence trick.—Of the various devices practised by swindlers, the "confidence trick" is one of the most common. It is usually carried out with the aid of one or more confederates, who persuade their dupe to intrust them with money or valuables, and to allow them to be taken out of his presence for a few moments as a proof of his confidence. Whilst the victim is awaiting their return the swindlers decamp with their plunder. The parties may be indicted for conspiracy to defraud.

Ring dropping is a name given to a fraud which is perpetrated thus:—A man apparently picks up a valuable pin or ring, and endeavours to induce some passer-by to give him a sum of money for it, in lieu, as he states, of any reward that may be offered for it. The ring is, of course, valueless.

The purse trick (*a*) is a sleight-of-hand feat, and may be classed with the three-card trick. The method adopted is to seemingly place in a purse three florins or half-crowns, and offer same to bystander for one or two shillings, copper coins being substituted for the silver ones before delivery.

The "stick and button" trick, and a lottery swindle in which labels with numbers are distributed and proceeds handed to holder of winning number, have of late been practised on racecourses.

Ringing the changes is a method of swindling practised when giving or receiving change by pretending that the amount put down was greater than was actually the case, or that sufficient change has not been given *R.* v. *Hollis*, 12 Q. B. D. 25; 48 J. P. 120; Stone's Justices' Manual, 525.

Mock auctions.—A mock auction consists in the sale of worthless articles at prices far above their value by pretended competition by fictitious bidders. The confederates may under certain circumstances be indicted for conspiracy to defraud the public.

(*a*) *R.* v. *Solomons*, *Times*, May 20th, 1890, Sol. J. 490; the C. C. R. held there was no larceny (Stone's Justices' Manual, 525). See also titles "Larceny by Trick," title Larceny (General Subjects), *post*, and title False Pretences.

Long firm frauds consist in obtaining goods by false pretences from merchants, farmers, etc., by a gang of swindlers, who by giving each other as references manage to obtain consignments of goods, which they at once dispose of and fail to pay for.

The following is a specimen of flash or cant language in use amongst thieves and itinerant beggars:—

Five-pound notes	Finnips.
Ten-pound notes	Double finnips.
The treadmill	Everlasting staircase.
Trampers' lodging-house	Padding ken.
Boys' lodging-house	Padding crib.
Quack doctors	Crocuses.
Buyers of stolen property	Fences.
To inform	To come it.
To be wary	Fight cocum.
A policeman	A fly.
An accomplice	Stalsman.
Umbrella menders	Mushroom fakers.
To pick pockets	To buz.
A watch	A yack.
To alter the maker's name in a watch	To christen a yack.
A marine store dealer who buys stolen property	A swag chovey bloak.
Fellows who go about half-naked begging clothes	Shallow covey.
Going without shoes	Gadding the hoof.
To get rid of five-shilling pieces	To work the bulls.

Specimen of Flash Letter.

DEAR DICK,—I have seen the swag chovey bloak, who christened the yacks quick. I gave him a double finnip. I am now on the shallow. I have got the yacks, so do not come it. Fight cocum. I am at the old padding ken, next door to padding crib; I am gadding the hoof; but quick, be a duffer; now on the square; I want a stalsman, buttoner to nail prads. I last week worked the bulls. I have lost my jomer. Mum now.

Translation.

DEAR RICHARD,—I have seen the person who bought the watches, and he altered the name in them immediately. I gave him a ten-pound note for doing it. I am now going half naked to avoid suspicion. I have got the watches back again; therefore do not turn informer. Be wary and sly; I am stopping at the old lodging-house, next door to the boys' lodging-house; do not say a word, but be very quiet. I am going about without shoes, but shall soon turn hawker. I am at present honest. I want a partner. Will you come and join me, and then we will commence stealing horses. I last week got through a great many bad five-shilling pieces. I have left my fancy girl. Be sure you say nothing.

An expression now in use "struck by lightning," denoting arrest through telegraphic communication, is very descriptive.

CHAPTER VI.—EVIDENCE.

THE word "Evidence" includes all the legal means exclusive of mere argument which tend to prove or disprove any matter of fact the truth of which is submitted to judicial investigation.

Oath.—By 24 & 25 Vict. c. 66, s. 1, persons called as witnesses, and objecting from conscientious motives to be sworn, are permitted to make a solemn affirmation or declaration in lieu of an oath. See also 32 & 33 Vict. c. 68, s. 4. And in the case of Jews, Mohammedans, heathens, etc., the oath is to be administered in such form and mode as, according to the religion of such person, will be a moral obligation (20 J. P. 203).

Incapacity.—No person is now excluded by reason of incapacity from crime from giving evidence in person or by deposition (6 & 7 Vict. c. 85, s. 1).

Dissuading witnesses.—Every one commits a misdemeanor who, in order to obstruct the due course of justice, dissuades, hinders, or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavouring to do so.

General rules.—The following are some of the general rules of evidence :—

That the best evidence the nature of the case will admit of shall be produced at the trial. Hearsay evidence is in general inadmissible (*a*). Conversations and remarks, which were not made in the presence and hearing of the accused, cannot be given.

The "opinion" of the witness as to any fact in issue is inadmissible, unless upon questions of skill and judgment.

Circumstantial evidence.—When direct or positive evidence of the the facts cannot be supplied, "circumstantial evidence" is admissible, but presumptive or circumstantial evidence should be admitted cautiously. Circumstantial evidence should be such as to produce nearly the same degree of certainty as that which arises from direct testimony, and to exclude a rational probability of innocence.

Prisoner's evidence.—The statement of one prisoner is not evidence for or against another prisoner (*b*). An accomplice may become a witness or "Queen's evidence" against his fellows, but the unsupported evidence of an accomplice ought not to be fully relied on without corroboration or collateral proof. No person charged with an offence can be compelled to give evidence for or against himself, nor can any person be compelled to

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(*a*) Evidence of a complaint made shortly after a crime is committed is not hearsay, but original evidence. The rule is to admit evidence of *the fact* of the complaint, and nothing more.

(*b*) But where one of two prisoners *jointly indicted* has pleaded guilty, his evidence may be received against the other. *R.* v. *Gallagher*, 39 J. P. 502. If the prisoners be tried *separately* there could be no objection to one prisoner being called as a witness for another prisoner.

answer any question tending to criminate (*c*) himself (14 & 15 Vict. c. 99, s. 3). The witness is not the sole judge of whether the questions may tend to criminate him. The court must see that there is reasonable ground to apprehend danger to the witness.

Evidence of accomplice.—It is not a rule of law that accomplices must be confirmed in order to render a conviction valid, but it is usual in practice for the judge to advise the jury not to convict on such testimony alone. *Per* JERVIS, C.J., in *R.* v. *Stubbs*.

But in *The Queen* v. *Meunier*, June, 1894, Justice CAVE stated, "I know of no power to withdraw the case from the jury for want of corroborative evidence" (L. R. 2 Q. B. 415). But WILLS, J., withdrew a case from the jury in May, 1895, because the evidence of an accomplice was not corroborated. *R.* v. *Oscar Wilde*.

The counsel for prosecution against several persons for misdemeanor has a right to the acquittal of any defendant whom he proposes to examine. *R.* v. *Rowlands*, R. & M. 401.

Confessions.—Confession of guilt freely and voluntarily made by the accused to any one may be given in evidence, but any evidence which has been obtained from a prisoner in consequence of any threat, promise, or inducement made to the prisoner by any person concerned in the apprehension, examination, or prosecution of the prisoner, will render such evidence inadmissible (Stephen on Evidence, p. 28); but any facts discovered in consequence of information so obtained may be given in evidence. *R.* v. *Rue*, Somerset Assizes, 1876, 34 L. T. 400. It would appear from this case that to render a confession admissible, it is not so much material to prove to whom or when it is made, as it is to ascertain the mind of the party making it, and to see whether or not it is probable that it was made voluntarily. See also Chap. III., *ante*.

An inducement held out or advice given by a fellow prisoner does not render the confession inadmissible (*R.* v. *Parker*, 25 J. P. 374), nor the prosecutor (the master) advising his servant (the prisoner) to answer any questions truthfully, etc. (*R.* v. *Jarvis*, 37 L. J. 1), nor the mistress of the prisoner in the presence of a police officer, saying, "You may as well tell the truth, it is sure to be found out" (*R.* v. *Edwards*, 33 J. P. 119, 145), nor a mother saying to her son, "You had better, as a good boy, tell the truth" (*R.* v. *Reeves*, 41 L. J. 403), nor did a policeman saying to the prisoner, "Now is the time to take it (a purse) back to her" (meaning the the prosecutrix), render the statement of the prisoner that he "will make it all up to her," inadmissible in evidence. *R.* v. *Jones*, 27 L. T. 765. It was said there is an increasing feeling against the extension of the rule, and a general opinion that in some cases it had been carried too far. See *R.* v. *Reeve*, L. R. 1 C. C. R. 362, referred to above.

But in a later case (May 21st, 1881), where prisoner's employer said to him before any charge had been made, "He (meaning a police inspector who was present) tells me you are making housebreaking implements; if that is so, you had better tell the truth, it may be better for you," the C. C. R. held that admissions then made were wrongly received in evidence, and quashed the conviction. *R.* v. *Fennell*, 45 J. P. 660. In a still later

(*c*) The Evidence in Criminal Cases Act, 1892, provides that every person charged with an offence (and the wife or husband) shall be a competent witness.

case, in 1884, the prosecutor took H. and C., who were in his employ, into his office, where there were two police officers, and said to H., "I know what has been going on between you and C. for some time; you had better speak the truth." He then made a confession, but as it was procured by threat, it was not admissible. *R.* v. *Hatt*, 49 L. T. 780; 48 J. P. 268.

Credibility of witness.—The credibility of a witness depends upon the knowledge of the fact he testifies, his disinterestedness, his integrity, his veracity, and his being bound to speak the truth by such oath as he deems binding. In all cases of treason two lawful witnesses are required to convict a prisoner. In almost all other cases one witness is sufficient.

The law with respect to the impeachment of the credit of witnesses has been the subject of legislative enactment, and the rules laid down by 28 & 29 Vict. c. 18 are applicable (by s. 1) to all courts of judicature.

Competency of witnesses.—14 & 15 Vict. c. 99, s. 2, treats of the competency as witnesses of parties to actions, suits, or other proceedings, but s. 3 of the Act enacts that in "criminal proceedings" (*d*) no person charged with the commission of any indictable offence or offences punishable on summary conviction shall be competent or compellable to give evidence for or against himself or herself, or compellable to answer any criminating question; or a husband a competent witness against his wife, or a wife against her husband. But recent legislation has modified this section, and *all parties and their husbands and wives* are competent witnesses in cases under the Licensing Acts, Sale of Food and Drugs Act, the Corrupt and Illegal Practices Prevention Act (s. 53), Conspiracy and Protection of Property Act, 1875 (ss. 4—6), the Criminal Law Amendment Act, 1885, and ss. 48 and 52 to 55 of 24 & 25 Vict. c. 100, as also under Animals Diseases Act, Married Women's Property Act, 1882, etc.

Husband and wife.—In charges of assault committed by the husband or wife against each other, it is the invariable practice to receive the evidence of the injured party against the other. It is clear law that a wife is a competent witness against her husband in respect of any charge which affects her liberty or person, and so is a husband a competent witness against his wife under like circumstances. The evidence of the wife is not, however, admissible in charges against the husband under the Vagrant Act (*Reere* v. *Wood*, 34 L. J. 15, and Treat. 33 J. P. 145, 316), nor does the third section of 32 & 33 Vict. c. 68, render her competent, or apply to such proceedings (Stone's Justices' Manual, 29th ed., p. 253).

The wife of one prisoner cannot be called as a witness for another prisoner with whom her husband is jointly indicted. *R.* v. *Thompson*, 36 J. P. 532, 667.

Children.—The evidence of children of any age is admissible if they appear to understand the moral obligation of an oath, and under the

(*d*) What is a civil or criminal proceeding was discussed in *Att.-Gen.* v. *Radloff*, 23 L. J. Exch. 240. In that case the judges were equally divided. POLLOCK, C.B., and PARKE, B., argued that all offences punishable by fine or imprisonment on summary conviction were "criminal proceedings." In *R.* v. *Hawkhurst*, 7 L. T. 268, and 26 J. P. 772, CROMPTON, J., said the test of a criminal proceeding is whether the offence is punishable by fine or imprisonment and is not a mere debt.

Criminal Law Amendment Act, 1885, the unsworn evidence of a child of tender years is receivable. Special provisions for taking the depositions of children are made by the Prevention of Cruelty to Children Act, 1894, ss. 13 and 14.

Character, evidence of.—In criminal proceedings the fact that an accused person has a good character is important, but the fact that he has a bad character is unimportant, unless it is itself a fact in issue, or unless evidence has been given that the prisoner has a good character.

Guilty knowledge.—The possession of stolen property *recently* after the commission of a theft is *prima facie* evidence that the possessor is either the thief or the receiver, under the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112, s. 19). Where proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property to be stolen which forms the subject of the proceedings taken against him. Where proceedings are taken against any person for having received goods knowing them to have been stolen, or having in his possession stolen property, and evidence has been given that the stolen property has been found in his possession, then if such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen, provided that not less than seven days' notice in writing shall have been given to the person accused, that proof is intended to be given of such previous conviction; and it shall not be necessary for the purposes of this section to charge in the indictment the previous convictions of the persons accused. As to guilty knowledge in cases of false pretences, see *R.* v. *Francis*, title FALSE PRETENCES, *post* (Stone's Justices' Manual).

DOCUMENTARY EVIDENCE.

The Documentary Evidence Act, 1868, prescribes the mode of proving (by a copy of the "Gazette," etc.) various documents, such as proclamation orders, regulations of the Queen or Privy Council, etc. See also 8 & 9 Vict. c. 113, and 14 & 15 Vict. c. 99, as to proof of public non-official documents.

The Municipal Corporations Act, 1882, s. 24, prescribes mode of proving bye-laws made by the council of any borough, and similar provisions as to proof of bye-laws under Public Health Act, 1875.

By the Bankers' Books Evidence Act, 1879, copies of entries in books by bankers in course of business are admissible. Bankers cannot be compelled to produce such books, except by special order of a judge.

In criminal proceedings every instrument liable to stamp duty is admissible in evidence, although it may not have the stamp required by law (33 & 34 Vict. c. 97, s. 17), which is not the case in civil proceedings.

Regarding "privileged document" and "privileged communications," see title LEGAL TERMS, Chap. VII., *post*.

Handwriting, evidence of.—The handwriting of a person may be proved by the writer himself; by a witness who saw the letter, signature, etc., written; by a witness who has a knowledge of the person's writing by having seen him write, etc.; by comparison by witnesses acquainted with the writing, or by skilled witnesses (known as "experts") of the disputed writing, with any writing proved to the satisfaction of the court to be genuine.

Previous conviction, evidence of.—As to proof of previous convictions by record or extract of such conviction, signed by the clerk of the court or other officer having the custody of the records of the court where such conviction was made, see title PREVENTION OF CRIMES ACTS, *post*.

Depositions—Sick persons.—Depositions properly taken are admissible in evidence on the trial of the accused, if it be proved that the person making such deposition is "so ill as not to be able to travel" (*e*), or that he has died, and that the deposition was taken in the presence and hearing of the accused, and that he had an opportunity of cross-examining the witness.

Dying declarations.—In cases of murder or manslaughter where the victim is likely to die, and there is no time to take his deposition in proper form, the statement of the injured person may be taken in the form of a "dying declaration"

Dying declarations may be taken by a police officer, or by any person, but where time permits they should be taken before a magistrate. They need not be in writing, but if possible should be, and in such cases should be signed by the deceased before witnesses. There is no particular form of declaration, nor do they require to be sworn to, the awful situation of the dying person being considered equal to the sanctity of an oath. To render dying declarations admissible in evidence it is necessary—

1. That at the time when they were made the declarant should have been in actual danger of death.
2. That he should have had a full apprehension of his danger, and have no expectation or hope of recovery.
3. That the declarant must entertain a settled hopeless expectation of death impending; not on the instant, but within a very short distance of time (*R.* v. *Gloster*, 32 Sol. J. 765); principle, as adopted by CHARLES, J., Sept., 1888.
4. That death should have ensued.

Although there is no particular form of declaration, yet, in order to comply with above requirements, it is desirable that it should commence with a statement somewhat as follows:—"I, *A.B.*, having the fear of death before me, and being without hope of recovery, state," etc.

The presence of the accused is not necessary, but if he be present he should be permitted to ask his accuser any question he wishes. Dying declarations are admissible only in the single instance of homicide. The declarations of the deceased are admissible only as to matters to which he

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(*e*) These words extend to a pregnant woman in daily expectation of confinement (*R.* v. *Wellings*); to a person paralyzed (*R.* v. *Cockburn*); but not to a person 74 years of age, afflicted with nervousness and liable to faint, but capable of travelling. *R.* v. *Farrell*, 38 J. P. 391.

would have been competent to testify if sworn in the court. They must, therefore, in general speak to facts only, and must be confined to what is relevant to the issue.

Examination of Witnesses.

Direct examination.—The examination of a witness by the party who produces him is called his direct examination or his examination-in-chief. In the direct examination leading questions on material points are not allowed to be put. "Leading questions" are those which suggest to the witness the answer desired or embody the answer, or in general that can be answered by "yes" or "no." A party may lead his own witness in the following cases:—On all matters which are merely introductory, and form no part of the substance of the inquiry: for the purpose of identifying persons or things: when a witness is called to contradict another as to expressions which he denies having used; where the witness appears hostile, by permission of the court; where witness's memory is defective, or the matter of the question complicated. Witnesses must in general speak to facts within their own knowledge, and they will not be permitted, with certain exceptions, to express their own belief or opinion.

Cross-examination.—When the direct examination is finished the witness may then be cross-examined by the opposite party. In cross-examining a witness leading questions may be asked.

Re-examination.—After a party has been cross-examined, the party who called him has a right to re-examine him upon any new fact which has arisen out of the cross-examination.

The court has always a discretionary power of recalling witnesses at any stage of the trial, and putting such legal questions to them as the exigencies of justice require. If a question has been omitted in the examination-in-chief, and cannot in strictness be asked on re-examination, as not arising out of the cross-examination, it is usual to request the court to make the inquiry, and such a request is generally granted (Extracts from Taylor on Evidence).

Ordering witnesses out of court.—It is a common practice when a case if called on for hearing to order the witnesses on both sides to leave the court, but if a person who has disobeyed such order by remaining in the room should be offered in evidence by either party, his testimony cannot, it seems, be excluded. In *Roberts* v. *Garrett*, Wilts Lent Assizes, 1842, 6 J. P. 154, which was an action for slander, a witness who continued in court after hearing the order given was called as a witness and objected to by council, but ERSKINE, J. held that the party was entitled to his evidence, and all the judge could do was to punish the party by fine or imprisonment for contempt. BYLES, J. ruled in *Selfe* v. *Isaacson*, 1 F. & F. 194, on an application to order all witnesses out of court, that the plaintiff could not be included in the order (Stone's Justices' Manual, p. 689).

Solicitor's address.—The rule laid down by COLERIDGE, L.C.J., in *R.* v. *Beard*, 8 C. & P. 142, as to the latitude allowed to counsel on an indictment for larceny applies, we conceive, to counsel and solicitors in summary proceedings. If the prisoner does not employ counsel, he is at liberty to make a statement for himself which is to have such weight with the jury as it is entitled to, but if he employ counsel he must submit to the rules which have been established with respect to the conduct of cases by counsel, one of which is that he will not be permitted to state anything

in his address which he is not in a situation to prove. See 37 J. P. 653. Mr. Justice NORTH, in addressing the grand jury at Reading Spring Assizes, 1882, said the practice followed by some counsel in defending prisoners of stating facts in their behalf without proving them by evidence "had lately been under the consideration of the judges, and they had agreed that the practice ought not to be encouraged, and that counsel should not be allowed to make statements which could not be proved by competent witnesses. The result of the rule will be either the prisoner must lose the benefit of counsel's services and defend himself, in which case he cannot practically be prevented from laying his story before the jury, or he must lose the benefit of bringing his version of the facts before the jury, and obtain the advantage of counsel. 26 Sol. J. 175. See also *R.* v. *Fanny Smith*, 46 J. P. 44 (Stone's Justices' Manual, p. 689).

POLICE AS WITNESESS.

Police, when under examination, should answer all questions put to them briefly, in a distinct tone of voice, taking care to depose *to those facts only* of which they have a *personal knowledge.*

A witness can refresh his memory by reference to any entry or memorandum *made by himself at the time* or shortly after the occasion of which he is speaking. Should the memorandum have to be referred to *in the witness box* the notes may have to be handed in.

When prisoners have made confessions or statements, the *exact words* used by them should be given in evidence, and in the *first* person. Disgusting and filthy language should not be repeated unless the witness is specially called upon to state the exact words made use of. Conversations and remarks which were not made *in the presence* of the prisoner cannot be given in evidence.

See p. 14 (*Evidence*) *as to manner and bearing of constable in witness box.*

Police informants.—It was laid down by COCKBURN, L.C.J., on trial of an indictment, that a police-constable is bound on cross-examination to give the name of his informant. *R.* v. *Richardson*, 3 F. & F. 693; 36 J. P. 238. But in ordinary cases it is for the judge to decide whether any such question would or would not be injurious to the administration of justice (Stephen's Digest, 116). See also the case of *Webb* v. *Catchlove*, 50 J. P. 795. The Court of Appeal has held in *Mark* v. *Bayfus* (38 W. R. 705) that the Director of Public Prosecutions was not required to state the name of his informant. See also p. 42.

POLICE AS ADVOCATES.

In summary cases the complainant or informant is at liberty to conduct his case by virtue of the Summary Jurisdiction Act, 1848, s. 12. But in indictable cases there is no such power given by statute, and it was expressly ruled in *R.* v. *Brice* (2 B. & A. 606) that a prosecutor had no right to address the jury. Lord Chief Justice COCKBURN refused (in case of Overend, Gurney, & Co.) to allow prosecutor, who had instituted proceedings in name of Crown in usual way, to conduct prosecution without counsel, and adjourned for counsel to be instructed (11 Cox C. C. 422).

Justice DENMAN, at Warwick, 1874, and HAWKINS, at Worcester, 1885, expressed themselves in emphatic language that the practice of police

acting as advocates was likely to impede, and in some cases entirely frustrate the proper administration of the criminal law.

The Q. B. Division quashed a conviction where a superintendent of police had acted as advocate, and had directed a police officer to refuse to disclose upon cross-examination the name of the person on whose premises he was secreted whilst watching licensed premises. The court held that it was a very bad practice to allow a policeman to act so that he would have to bring forward in a court of justice only such evidence as he might think fit and keep back any that he might consider likely to tell in favour of the prisoner. *Webb* v. *Catchlove*, 50 J. P. 795 ; 82 L. T. 103. In a later case the court agreed with what was said in *Webb* v. *Catchlove*, but held that an informant or complainant in summary cases is entitled to open his case and address the court, examine his witnesses and cross-examine those called for the defence, whether he be a private complainant or public officer. *Duncan* v. *Tims*, 35 W. R. 667 : 35 L. T. 719. [Extract from Stone's Justices' Manual, 29th ed., p. 876.]

The justices of Worcester endeavoured to elicit from the Home Office a definite opinion for their guidance. The reply of the Home Secretary was to the effect that, in his opinion, an ordinary informant or complainant in summary cases is entitled to open his case and address the court, also to examine and re-examine his own witnesses, and to cross-examine witnesses called for the defence—a right which is not affected by his giving evidence as a witness ; and that there appeared to be no distinction between an information laid by a private informant or complainant and an information laid by a chief or other constable in matters appertaining to him in his official capacity rather than in his individual or private capacity. The Home Secretary was, however, emphatic on one point, that the right *does not extend* to informations relating to indictable offences.

CHAPTER VII.

LEGAL PRINCIPLES, DEFINITIONS, ETC.

The Law of England is divided into two kinds—(1) the common law and (2) the statute law.

(1.) *The common law* includes the general customs, or the common law properly so called; also the particular customs of certain parts of the kingdom.

(2.) *The statute law* is made by Act of Parliament.

Ignorance of the law is no excuse for breaking it, as every person is supposed to know the law.

A sane man is conclusively presumed to contemplate the natural and probable consequence of his own acts, and therefore the intent to kill is conclusively inferred from the deliberate violent use of a deadly weapon.

Crime.—A *crime* is the violation of a right (*a*).

Crimes consist either of misdemeanors or felonies.

In our law misdemeanor is generally used in contradistinction to felony, and comprehends all indictable offences which do not amount to felony, as perjury, battery, libels, conspiracies, etc.

DEFINITIONS.

Affidavit.—An affidavit is a written statement upon oath taken before a person duly authorized to administer the oath. The term "exhibit" is usually applied to a document referred to in, but not annexed to, an affidavit, shown to the witness when the affidavit is sworn and referred to by him in his evidence.

Bailee.—Persons to whom goods are entrusted for a specific purpose, viz., to be conveyed, repaired, etc., are considered "bailees" of such goods. If the bailee converts the goods to his own use he is guilty of larceny.

Burglary is the breaking and entering of the dwelling-house of another in the night-time (9 P.M. to 6 A.M.) with felonious intent.

Certiorari.—*Certiorari* (to be more fully informed) is the name of a writ issued from the Queen's Bench Division of the High Court of Justice. It commands, in the Queen's name, the judges and officers of inferior courts to certify and return the records of a cause depending before them, to the end that the party may have more sure and speedy justice.

Chattel.—A chattel is any article (not in the nature of freehold), either movable or immovable, belonging to a person.

(*a*) A crime is the violation of a right when considered in reference to the evil tendency of such violation as regards the community at large (4 Steph. Com., 6th ed., p. 94).

Depositions.—See under INFORMATION, p. 45.

Embezzlement is the appropriation to his own use by a clerk or servant, etc., of goods or moneys entrusted to him for his master. Embezzlement is a species of larceny.

Exhibit.—See "Affidavit," p. 43.

Felonies.—See Chap. I., p. 7, *ante*.

Compounding Felonies.—Though the bare taking again of a man's goods which have been stolen (without favour shown to the thief) is no offence, yet where a man either takes back the goods or receives other amends on condition of not prosecuting it is a misdemeanor, and so in any other felony an agreement not to prosecute an indictment for reward is a misdemeanor.

Under the Larceny Act, s. 108, and the Malicious Injuries Act, s. 66, justices are empowered to arrange a compromise after a summary *conviction* for a first offence against Acts.

Misprision of felony.—A man who knowing a felony to have been committed, he having been no party to it, conceals it, is guilty of misprision of felony, which is a misdemeanor.

Feræ Naturæ,—Animals.—Beasts and birds of a wild disposition, such as deer, hares, coneys in a warren, pheasants, partridges, etc., as distinguished from those *domitæ naturæ*, or tame, such as horses, sheep, poultry, etc. They are not whilst living subjects of absolute property, but a man may acquire a qualified property in them either by his reclaiming and making them tame by art or industry, or by so confining them that they cannot escape, as deer in a park, hares or rabbits in inclosed warren, etc.

Fieri Facias.—This writ, usually called *fi. fa.*, is a command to the sheriff to seize the goods and chattels of a party who has been adjudged in any of the Queen's courts to damage or costs. All personal property may be taken except wearing apparel to the value of 5*l*.

Habeas Corpus.—*Habeas corpus ad subjiciendum* (that you have the body to answer). This, the most celebrated prerogative writ in the English law, is a remedy for a person deprived of his liberty. It is addressed to him who detains another in custody, and commands him to produce the body, with the day and cause of his capture and detention, and to do, submit to, and receive whatever the judge or court shall consider in that behalf. It may be issued by any division of the High Court of Justice, and runs throughout the Queen's dominions.

Hue and Cry.—The old common law process of pursuing with horn and voice felons and such as have dangerously wounded another.

Homicide is the killing of a human being by the act of another human being. It may be justifiable, excusable, or felonious. Regarding the doctrine of homicide in case of "necessity," see title HOMICIDE (General Subjects), *post*.

Indictment.—An indictment is a written accusation of one or more persons of a crime preferred to and presented on oath by a grand jury. The accusation is called a bill when presented to, and an *indictment* when found by, the grand jury. Twelve grand jurors must find for a "true bill."

Information.—An information is a charge on oath laid before a magistrate. An information in writing and on oath must first be made before a warrant to arrest or to search can be obtained. An information when in writing should contain a simple but full statement and history of all the facts to which the witness can depose. It should be taken as nearly as possible in the witness's own words, and in the first person. The use of technical terms and descriptions should be avoided. Where several persons are charged, the separate acts done by each should be distinctly set forth. The christian and surname of the informant, and of all persons named in his information, should be stated in full; also the time and place of the offence.

Deposition.—A deposition is an information in writing taken *in the presence and hearing of the accused*, which fact should be therein set forth. Should the person who swears the deposition die before the trial, upon proof of his death and that such deposition had been taken on proper form in the presence and hearing of the accused, and that he or his counsel or attorney had an opportunity of cross-examining such witness, the depositions can be read as evidence at the trial.

Infant.—An "infant" in law is a person under the age of twenty-one. Under the age of seven years an infant cannot be guilty of felony.

Infanticide is the killing of an infant after it is born.

Kidnapping is a term applied to the offence of child stealing.

Larceny at common law is the wrongful taking and carrying away of the personal goods of another with a felonious intention of converting them to one's own use.

Goods which are not personal chattels at common law have been made the subject of larceny by statute.

Libel.—See title LIBEL (General Subjects), *post.*

Local Authority.—Local authorities are constituted under various statutes and empowered to grant licences or authorized to do some lawful act or to enforce the law. In the majority of cases justices in petty sessions are the local authority in counties, and the mayor and corporation in boroughs.

Malice.—A formed design of doing mischief to another. It is either *express*, as when one with a sedate and deliberate mind and formed design kills another, which formed design is evidenced by certain circumstances discovering such intention, as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm; or *implied*, as where one wilfully poisons another. In such a deliberate act the law presumes malice, though no particular enmity can be proved. "Every one must be taken to intend the natural consequences of his actions." If any one acts in exactly the same way as he would do if he bore malice to another, he cannot be allowed to say he does not (1 Steph. Com., 6th ed., p. 160).

Mandamus (we command).—A high prerogative writ of a most extensive remedial nature. In form it is a command issuing in the Queen's name from the Court of Queen's Bench, requiring any person, corporation, or inferior court to whom it is addressed to do some thing therein specified which appertains to their office, and which the court holds to be consonant

to right and justice. It is issued principally for public purposes and to enforce performance of public rights or duties. It is a general rule that this writ is only to be issued where a party has no other specific remedy.

Misdemeanor.—See Chap. I., p. 7, *ante*.

Misdemeanant.—A misdemeanant is a person who has been convicted of a misdemeanor. They are of the first, second, and third class. Whenever any person convicted of misdemeanor is sentenced to imprisonment *without* hard labour, it shall be lawful for the court or judge to order that such person shall be treated as a misdemeanant of the first division, and a misdemeanant of the first division shall not be deemed to be a criminal prisoner within the meaning of the Act (28 & 29 Vict. c. 126, s. 67).

Negligence, culpable.—See title, HOMICIDE (General Subjects), *post*.

Night.—The period of darkness between sunset and sunrise. Under several Acts of Parliament "night" begins one hour after sunset and ends one hour before sunrise. Night is so defined under the Night Poaching Act (9 Geo. 4, c. 69, s. 12).

Under the Larceny Act night shall be deemed to commence at nine of the clock of the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day (s. 1 of Act).

Nuisances.—A public nuisance is such an inconvenient or troublesome offence as annoys the community in general and not a few individuals only, and is indictable as a misdemeanor. See title NUISANCE (General Subjects), *post*.

Onus probandi.—See BURDEN OF PROOF, p. 6.

Police district.—A police district is any county or division of a county, or any city, borough, or town maintaining a separate police force, and the chief or head constable thereof is the chief officer of police.

Privileged communication.—A privileged communication is that which a witness cannot be compelled to divulge. Communications made in the public interest for the prevention or detection of crime (cases quoted in Taylor on Evidence, 7th ed., vol. i., p. 792) enjoy the same privileges as those which take place between a husband and wife during marriage, or between a client and his legal adviser, or in the *bonâ fide* discharge of a duty.

Privileged documents.—The official transaction between the heads of the departments of government and their subordinate officers are in general regarded as confidential and privileged matter, which the interests of the State will not permit to be revealed (Taylor on Evidence).

Recognizances.—A recognizance at common law is an obligation duly acknowledged to do a certain thing stipulated. When persons under a rule of bail to keep the peace or be of good behaviour commit a breach of such conditions, the recognizance can be "estreated."

Remands.—Prisoners charged with indictable offences may be remanded from time to time by courts of summary jurisdiction. A justice may remand a prisoner for any term not exceeding eight days at a time.

Riot.—A riot is a tumultuous disturbance of the peace by *three or more persons* assembling together with an intent to assist each other in the exercise of some enterprise and afterwards executing the same to the terror of Her Majesty's subjects.

An affray is the fighting of *two or more persons* in some public place to the terror of the Queen's subjects.

Regarding "Unlawful assembly," "Riot," etc., see title RIOT (General Subjects), *post*.

Sacrilege is the breaking and entering with felonious intent any church chapel, meeting house, or other place of divine worship.

Slander is the malicious defamation of a person in his reputation, profession, or business by words, as a libel is by writing, etc. It is not an offence within the operation of the criminal law unless the words are calculated both in themselves and in their use to provoke an immediate breach of the peace.

Subpœna (*under punishment*).—A subpœna is a writ commanding attendance in court upon a certain day therein named under a penalty. In criminal cases, the subpœna is usually served on a witness to compel his attendance to give evidence or produce documents. Four witnesses can be included in one subpœna.

Conduct money is the sum which must be tendered to a witness for his travelling expenses when a subpœna is served on him requiring him to attend and give evidence.

CHAPTER VIII.

BOROUGH CONSTABLES AND "TOWNS" POLICE.

Police forces were first established in boroughs under 5 & 6 Will. 4, c. 76 (1835).

That Act was repealed by the Municipal Corporations Act, 1882, Part IX. of which contains provisions regarding the appointment, etc. of police in boroughs, and the Police (England) Acts (1839 to 1890) contain various enactments relating to "consolidations," "reciprocity," etc. between county and borough police (*a*).

Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

This Act provides for the appointment of a Watch Committee in boroughs, who under s. 191 are empowered to appoint constables.

Sections 197 to 200 contain provisions regarding levy of watch rate, etc.

Regulations. The watch committee may frame such regulations as they deem expedient for promoting efficiency. The committee or any two justices *can suspend or dismiss constables*, but nothing contained in the section is to interfere with the operation of 3 & 4 Vict. c. 88. See Chap. VIII. *post*.

Returns.—Quarterly returns are to be forwarded to Secretary of State, also crime returns, see note (*a*), *infra*.

Jurisdiction.—A borough constable shall be sworn in before a justice, and when so sworn shall in the borough, in the county in which the borough or any part thereof is situate, and in every county being within seven miles from any part of the borough, and in all liberties in any such county, have all such powers and privileges and be liable to all such duties and responsibilities as any constable has and is liable to for the time being in his constablewick at common law or by statute, and shall obey the lawful commands of a justice having jurisdiction in the borough or in any county in which the constable is called on to act (s. 191).

Apprehension.—A borough constable may, while on duty, apprehend any idle or disorderly person whom he finds disturbing the public peace, or whom he has just cause to suspect of intention to commit a felony, and deliver him into the custody of the borough constable in attendance at the nearest watch house, in order that he may either be secured until he can be brought before a justice, or where the constable in attendance is empowered and thinks fit to take bail, give bail for his appearance before a justice (s. 193).

Neglect.—If a constable is guilty of neglect of duty or of disobedience to a lawful order he may be imprisoned or fined 40*s.* or dismissed (s. 194).

(*a*) See 3 & 4 Vict. c. 88, s. 14, as to consolidation; 19 & 20 Vict. c. 69, s. 6, as to mutual powers. Section 14 relates to "crime returns," and s. 16 to Treasury contributions.

Assaults.—Persons assaulting constables are liable to penalty of 5*l.* (s. 195).

Special Constables.—Under s. 196 of Act two or more justices having jurisdiction in a borough shall, in October of every year, appoint by precept signed by them, so many as they think fit of the inhabitants of the borough, not legally exempted from serving the office of constable, to act as special constables in the borough.

Each constable to make a declaration to the effect of the oath set forth in 1 & 2 Will. 4, c. 41 (*see Form of Oath*, p. 52).

He shall act when required by the warrant of a justice, but not otherwise, and the warrant shall state that the ordinary police force is insufficient to maintain the peace. Persons entitled to vote at a parliamentary election are not liable to serve as special constables during the election. Special constables are entitled to remuneration of 3*s.* 6*d.* a day, and may receive further sums in accordance with the Fifth Schedule of Act.

The following is the text of the section referred to:

(1.) Two or more of the justices having jurisdiction in a borough shall, in October in every year, appoint by precept signed by them, so many as they think fit of the inhabitants of the borough, not legally exempt from serving the office of constable, to act as special constables in the borough.

(2.) Every such special constable shall make a declaration to the effect of the oath set forth in the Act of the session of the first and second years of the reign of King William the Fourth, chapter forty-one, for amending the laws relative to the appointment of special constables, and for the better preservation of the peace, and shall have the powers and immunities, and be liable to the duties and penalties enacted by that Act.

(3.) He shall act when so required by the warrant of a justice having jurisdiction in the borough, but not otherwise.

(4.) The warrant shall recite that, in the opinion of the justice, the ordinary police force of the borough is insufficient at the date of the warrant to maintain the peace of the borough.

(5.) Nothing in this section shall make any person having a right to vote at a parliamentary election liable or compellable to serve as a special constable at or during the election.

(6.) Special constables shall be entitled to remuneration as appearing by the Fourth and Fifth Schedules.

[The schedules authorize payment out of borough fund of any extraordinary expenses incurred in apprehension, etc. of offenders.]

Towns Police Constables.

In towns in which there may be a Special Act for the regulation of the police after July 22nd, 1847, certain sections of 10 & 11 Vict. c. 89 (*b*), if embodied, apply. The mode of appointing constables in such towns is set forth in ss. 6, 7, and 8, of 10 & 11 Vict. c. 89.

Section 9 provides for expenses of prosecution and allowances to such constables.

(*b*) An Act "for consolidating in one Act certain provisions usually contained in Acts for regulating the police of towns."

Under s. 10 constables are liable to a penalty of 5*l.* or fourteen days' imprisonment should they resign without leave or notice.

Section 11. Constables dismissed to deliver up accoutrements. Penalty for unlawful possession of accoutrements or for assuming dress of constable, 10*l.* (s. 14).

Section 13 empowers commissioners to provide offices, watch-houses, etc.

Section 14 enacts that the constables appointed by virtue of this and the Special Act shall keep watch and ward within the limits of the Special Act, and shall use their best endeavours to prevent any mischief by fire, and all felonies, misdemeanors, and breaches of the peace.

Under s. 15 any person found committing any offence punishable either upon an indictment or as a misdemeanor upon summary conviction by virtue of this or the Special Act may be taken into custody, without a warrant, by any of the said constables, or may be apprehended by the owner of the property on or with respect to which the offence is committed, or by his servant or any person authorized by him, and may be detained until he can be delivered into the custody of a constable; and the person so arrested shall be taken, as soon as conveniently may be, before some justice, to be examined and dealt with according to law: Provided always, that no person arrested under the powers of this or the Special Act shall be *detained in custody* by any constable or other officer, without the order of some justice, longer than shall be necessary for bringing him before a justice, or than *forty hours at the utmost* (s. 15).

Section 16 (*Neglect of Duty*) enacts that every constable acting within the limits of the Special Act who is guilty of any neglect or violation of his duty as a constable, and convicted thereof before two justices, shall be liable to a penalty not exceeding 10*l.*; the amount of which penalty may be deducted from his salary or wages, or he may be imprisoned for one month with hard labour.

Section 17 empowers the superintendent constable or superior officer of police to take recognizances in certain cases.

Section 18. Forms of recognizances. Recognizances are to be registered and returned to justice (s. 19).

A constable is liable to a penalty of 10*l.* or imprisonment for one month for neglect of duty (s. 16).

And persons are liable to a penalty of 5*l.* or one month's imprisonment for assaulting constables in execution of duty (s. 20).

CHAPTER IX.

SPECIAL AND OTHER CONSTABLES.

The Acts regulating the appointment of special constables are 1 & 2 Will. 4, c. 41, and 5 & 6 Will. 4, c. 43. The appointment of constables on public works and on canals and navigable rivers is regulated by 1 & 2 Vict. c. 80 and 3 & 4 Vict. c. 50. The principal provisions of these Acts are here given, as also the provisions of the Parish Constables Act (*a*) and the Act relating to "High Constables."

["Additional" constables (*b*) are appointed under the Police Acts. See 3 & 4 Vict. c. 88, s. 19, p. 60].

Special Constables.

The Act 1 & 2 Will. 4, c. 41, empowers justices to appoint special constables in cases of riot, etc., and this power of appointment is enlarged by 5 & 6 Will. 4, c. 43.

By 1 & 2 Vict. c. 80, the expenses of special constables appointed near public works may have to be defrayed by the contractor or company carrying on the works. See "Constables on Public Works," p. 54. As to special constables in boroughs, see Chap. VIII., *ante*.

Voters.—17 & 18 Vict. c. 102, s. 8, provides that voters shall not be required to serve as special constables at parliamentary elections unless they consent to do so.

Expenses.—41 Geo. 3, c. 78, enacts that when special constables shall be appointed in England to execute warrants in cases of felony, two justices may order proper allowances to be made for their expenses and loss of time, which order shall be submitted to quarter sessions.

1 & 2 Will. 4, c. 41.

Two or more justices, upon information on oath that disturbances exist or are apprehended, may appoint special constables. In all cases where it shall be made to appear to any two or more justices of the peace of any county, riding, or division having a separate commission of the peace, or to any two or more justices of the peace of any liberty, franchise, city, or town in England or Wales, upon the oath of any credible witness, that any tumult, riot, or felony has taken place or may be reasonably apprehended in any parish, township, or place situate within the division or limits for which the said respective justices usually act, and such justices shall be of opinion that the ordinary officers appointed for preserving

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(*a*) The appointment of parish constables is now restricted to certain parishes.

(*b*) These constables form part of the recognized police force, but are appointed on the application and at the cost of private individuals and for prescribed areas.

the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants and the security of the property in any such parish, township, or place as aforesaid, then and in every such case such justices or any two or more justices acting for the same division or limits, are hereby authorized to nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of constable) residing in such parish, township, or place as aforesaid, or in the neighbourhood thereof, to act as special constables, for such time and in such manner as to the said justices respectively shall seem fit and necessary, for the preservation of the public peace, and for the protection of the inhabitants, and the security of the property in such parish, township, or place; and the justices of the peace who shall appoint any special constables, by virtue of this Act, or any one of them, or any other justice of the peace acting for the same division or limits, are and is hereby authorized to administer to every person so appointed the following oath (*c*).

Form of Oath to be taken by Special Constables.

"I, *A. B.*, do swear, that I will well and truly serve our Sovereign Lord the King in the office of special constable for the parish [*or* township] of , without favour or affection, malice, or ill-will; and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of His Majesty's subjects; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law.

So help me God."

Notice to Secretary of State, etc.—Whenever it shall be deemed necessary to nominate and appoint such special constables, notice of such nomination and appointment, and of the circumstances which have rendered such nomination and appointment expedient, shall be forthwith transmitted by the justices to the Secretary of State and lieutenant of county.

Section 2 empowers Secretary of State, on representation of justices, to order persons to be sworn in, though exempt by law. The persons so sworn shall be liable *to act for two calendar months.*

By s. 3, the Secretary of State may direct any lord lieutenant to cause special constables to be sworn in, and no exemption allowed.

By s. 4, justices may make regulations respecting special constables, and may remove them for misconduct.

Powers of special constables.—Section 5 enacts that every special constable appointed under this Act shall, not only within the parish, township, or place for which he shall have been appointed, but also throughout the entire jurisdiction of the justices so appointing him, have, exercise, and enjoy all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities, as any constable duly appointed now has within his constablewick by virtue of the common law of this realm, or of any statute or statutes.

(*c*) See 31 & 32 Vict. c. 72, s. 12 (sub-s. (4)), which now provides for the substitution of declaration for oaths.

Section 6 contains provisions empowering special constables in certain cases *to act in adjoining counties*, subject to order of justices.

Penalties.—Penalty for refusing to attend and take oath of office, etc., or for refusing to serve, or for disobedience of orders, 5*l.* (*d*) (ss. 7 and 8).

Power to discontinue service.—Section 9 enacts that the justices who shall have appointed any special constables under this Act are hereby empowered, or the justices acting for the division or limits within which such special constables shall have been called out, at a special session to be held for that purpose, or the major part of such last-mentioned justices at such special session, are hereby empowered to suspend or determine the services of any or all of the special constables so called out, as to the said justices respectively shall seem meet; and notice of such suspension or determination of the services of any or all of the said special constables shall be *forthwith transmitted* by such respective justices to the Secretary of State, and also to the lieutenant of the county.

Staves.—Special constables are (s. 10) to deliver up staves, etc., within one week of expiration of office. (Penalty 2*l.*)

Assaulting constables.—Section 11 imposes a penalty of 20*l.* for assaulting or resisting any constable appointed by virtue of this Act whilst in the execution of his office.

Militia.—Section 12 enacts that special constables are not to gain a settlement, nor be exempt from serving in militia.

Allowances to special constables.—Justices can order reasonable allowances and expenses to be paid to special constables out of county rate; and justices may also order the payment of such expenses as may have been incurred in providing staves or other necessary articles for such special constables, orders for payment to be made upon the treasurer of the county, riding, or division.

[Proviso as to mode of payment in places not contributing to county rate].

Justices can adjourn special sessions from time to time if they see fit (s. 14).

Limitation, etc.—Prosecutions for offences punishable upon summary conviction under this Act shall be commenced within two calendar months after the commission of the offence; and penalties shall be paid to overseer for county rate (s. 15).

Payment of penalties, levying, etc.—Justices can order payment of penalty either immediately or within such period as they shall think fit. Power is given to distrain, and in default to imprison.

As to form in which the conviction shall be drawn up, see s. 17.

Venue in actions, notice, etc.—All actions and prosecutions shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, notice in writing to be given to defendant one calendar month before commencement of action.

(*d*) See 31 & 32 Vict. c. 72, s. 13, which applies a like penalty for refusal to make declaration in place of oath, etc.

Saving clause.—Nothing in this Act contained shall be construed to abridge any powers of justices for preserving the public peace.

The powers of magistrates as to appointment of constables are enlarged by 5 & 6 Will. 4, c. 43, which provides that all persons willing to act as special constables under the provisions of 1 & 2 Will. 4, c. 41, shall be capable of being appointed and acting, and may be appointed and act as such constable, *notwithstanding they may not be resident in such parish, township, or place* as aforesaid, or in the neighbourhood thereof; and every person appointed and acting as special constable under the provisions of this Act shall have all the same powers, and be entitled to and enjoy all the same privileges and benefits, and be subject to all the same duties and liabilities, as the special constables appointed or to be appointed under the provisions of the said Act.

Constables on Public Works.

1 & 2 Vict. c. 80, provides for the payment of constables keeping the peace near public works. The provisions of the Act are as follows:—

1. Whereas great mischiefs have arisen by the outrageous and unlawful behaviour of labourers and others employed on railroads, canals, and other public works, by reason whereof the appointment of special constables is often necessary for keeping the peace, and for the protection of the inhabitants and security of the property in the neighbourhood of such public works, whereby great expenses have been cast upon the public rates of counties and other districts chargeable with such expenses: Be it therefore enacted, that after the passing of this Act, whenever any special constables shall be appointed under the authority of Acts (*c*) passed in the second and sixth years of the reign of His late Majesty, and it shall be made to appear to any two or more justices of any county, borough, etc., *on the oath of three or more credible witnesses*, that the appointment of special constables referred to in Acts quoted has been occasioned by the behaviour, *or by reasonable apprehension of the behaviour*, of the persons employed upon any railway, canal, or other public work made or carried on under the authority of Parliament within the district or division for which such justices usually act, it shall be lawful for such justices as aforesaid, at any time not exceeding one calendar month next after such appointment, to *make orders from time to time upon the treasurer* or other officer who shall have the control or custody of the funds of any company making or carrying on such railroad, canal, or other public work, *for the payment of such reasonable allowances* for their trouble, loss of time, and expenses to such special constables who shall have so served or be then serving as to the said justices shall seem proper; and a copy of every such order shall be sent by the justices to one of Her Majesty's principal Secretaries of State, and such order, if allowed by the Secretary of State, shall be binding on such company, and on every such treasurer and officer thereof: Provided always, that nothing therein contained shall empower any such justices to order any allowance for any such special constables at the rate of more than *five shillings daily* to be paid to each special constable employed for the purposes aforesaid.

2. If it shall appear to the Secretary of State that there was no need for the appointment of such special constables, or that a greater number of special constables were appointed than was needed, the Secretary of State

(*c*) See title Special Constables, *ante*.

shall have power to disallow any such order, or to reduce the amount ordered to be paid by any such order; and in such case the order shall be of no force, or shall be of force for such reduced amount only.

3. In all cases where such treasurer or other officer shall refuse or neglect, during three weeks next after demand thereof, to pay the sum of money so ordered and allowed, it shall be lawful for the justices to cause the same to be levied by distress upon the goods and chattels belonging to such company.

Constables on Canals and Navigable Rivers.

Robberies and other outrages being frequently committed on canals and navigable rivers, power has been given to appoint constables for better keeping the peace, and for the prevention and detection of crime along the line of such canals and rivers and in the neighbourhood thereof.

Under 3 & 4 Vict. c. 50, s. 1, any two justices of the peace, and the watch committee of any incorporated borough, *on the application* of the committee or the directors of the company, or proprietors of any canal or navigable river, or of any clerk or agent of any such company duly authorized by such committee or directors, *may appoint* so many persons as they shall think fit from among those recommended to them for that purpose by such company of proprietors, clerk or agent to act as constables on or along such canal or river, and may dismiss any person so appointed (s. 2).

Duties.—Every one so appointed, and having taken oath of office, shall have full power to act as constables for preservation of peace, and security of property on such canal or river, and the towing-paths and works belonging thereto, and on and within any railways, docks, lands, and premises belonging to any such company, and in all places within one quarter of a mile of such canal or river, or from such railways, and shall have such powers, protections, and privileges for the apprehending of offenders, and for keeping the peace, which any constable duly appointed has within his constablewick; such power not to extend to the metropolitan police district, or the city of London, or in any places beyond the banks, towing-paths, and other premises belonging to such company, as may be situate within any other city, or incorporated borough (s. 1).

Payment.—Every such company of proprietors may pay to every such constable out of the moneys and effects of the company such salary or allowances as the company shall think fit (s. 3).

Neglect of duty.—Every constable guilty of any neglect or breach of duty in his office is liable to a penalty of 10*l.* (deducted from salary due), or imprisonment for one month (s. 4), and failure to deliver up clothing, etc., on dismissal or cessation of office, is also punishable with imprisonment. A search warrant may be granted for articles not so delivered (s. 5).

Assault on constables.—Any person assaulting or resisting such constables in the execution of their duty, or aiding or inciting any person so to do; penalty 10*l.*, or 2 months' imprisonment (s. 6).

Offences. Every person who shall be found upon any such canal, river, or premises, or on board of any boat or vessel lying in canal or river, or in any lock or dock thereunto belonging, having in his possession any tube or other instrument for the purpose of unlawfully obtaining any wine, spirits, or other goods, or having any skin, bladder, or other utensil for the purpose

of carrying away any such wine, etc., shall be liable to a penalty of 5*l*., or 1 month's imprisonment (s. 7).

Every person who shall bore, break, or otherwise injure any cask, box, or package containing wine, spirits, or other liquors, or any case, box, or roll of goods on board of any boat, vessel, or waggon, or in or upon any warehouse, belonging to any such canal or river, with intent to steal, obtain or injure the contents or any part thereof, or who shall unlawfully drink or wilfully spill, or allow to run to waste any such liquors, shall be liable to a penalty of 5*l*. and value of the goods, or may be imprisoned for 1 month (s. 8).

Apprehension of offenders.—Any idle and disorderly person disturbing the peace, or whom the constable may suspect of having committed or being about to commit any felony, misdemeanor, or breach of the peace or other offence against this Act, or found loitering about the towing-path, landing place, etc., between sunset and eight o'clock in the morning, and not giving a satisfactory account of himself, may be apprehended without a warrant (ss. 10 and 11); and any person offering property suspected to be stolen may be detained and delivered over to the constable (s. 12). Penalties are recoverable before two justices (s. 14).

Parish Constables.

Parish constables were originally appointed under 5 & 6 Vict. c. 109, but by the Parish Constables Act, 1872 (35 & 36 Vict. c. 92), the *general appointment of parish constables is now rendered unnecessary*.

Parish constables are liable to certain penalties for neglect of duty under Acts passed in the reign of Geo. 3 and Geo. 4 (33 Geo. 3, c. 55, and 5 Geo. 4, c. 83). 3 & 4 Will. 4, c. 90, repeals 2 Geo. 4 (Lighting and Watching Act), and makes other provisions in lieu thereof. Sections 39—42 of Act relate to the government and duties of watchmen, but these provisions, though unrepealed, are to all intents and purposes obsolete.

Appointment and Payment of Parish Constables (*f*).

(5 & 6 Vict. c. 109; extended by 7 & 8 Vict. c. 52, and 13 & 14 Vict. c. 20.)

Justices can hold special sessions for appointing same.

By s. 2 justices are required within the first seven days of February in each year to issue a precept to the overseers of parish, requiring them to make out and return, before the 24th of March in each year, a list in writing of a competent number of men qualified to serve as constables.

Overseers can summon meeting and make out list of persons qualified.

Section 5 reads:—"And be it enacted, that every able-bodied man resident within the said parish, between the ages of twenty-five years and fifty-five years, rated to the relief of the poor, or to the county rate, on any tenement of the net yearly value of four pounds or upwards, except such persons as shall be exempt or disqualified as hereinafter mentioned, shall be qualified and liable to serve as constable of that parish."

Section 6 gives list of persons exempted, and s. 7 of persons disqualified.

(*f*) Now required only for certain parishes. See ss. 1 and 2, 35 & 36 Vict. c. 92. By s. 6, Local Government Act, 1894, the powers of vestries have been transferred to parish councils.

Section 8 enacts that the overseers shall, on the first three Sundays in March in each year, fix on church doors, and keep for inspection, lists of persons qualified to serve.

Sections 10 and 11 give details as to selection of persons by justices. A person who has once served is exempted from serving until every other qualified person has served.

Sections 12 and 13, "Oath," "Substitutes," etc., are repealed by 35 & 36 Vict. c. 92, s. 3.

Section 14 enacts that a list of constables appointed be published, and parish lists be affixed to church doors.

Section 15. Constables appointed shall have within the whole county, and also in every county adjoining, all the powers, privileges, and responsibilities of a constable within his constablewick, but shall not be bound to act as constables beyond the parish for which they are severally appointed, without the special warrant of a justice of the peace.

Section 16 provides for vacancies in office.

Section 17 enacts, "That the justices of the county in general or quarter session assembled shall (subject to approval) settle tables of fees and allowances to the clerks to the justices for the performance of their duties under this Act, and to the constables for the service of summons and execution of warrants, and for the performance of other occasional duties" (*g*).

Section 22 relates to the providing of lock-up houses.

Section 23 is repealed by 13 & 14 Vict. c. 20, s. 6, which empowers justices to appoint a "Superintending Constable," and constables to take charge of lock-up houses.

Section 25. As to application of penalties levied under Act to be applied in aid of poor rates.

Section 26 defines terms "County," "Parish," "Overseer."

Parish Constables Act, 1872.

(35 & 36 Vict. c. 92.)

By the Parish Constables Act, 1872, the general appointment of parish constables became *unnecessary*.

Constables are not now to be appointed except in cases where the *quarter sessions deem it necessary* for the preservation of the peace or the proper discharge of the duty in any parish.

Section 2. When the justices shall have chosen the constable for any parish they shall make out a warrant of appointment and cause it to be served upon the person so chosen, who shall be bound to act thereon, unless he shall secure a substitute, and the justices shall make the appointment of the person so substituted subject to provisions of 5 & 6 Vict. c. 109.

Section 4. As to appointment of constables by vestries of parish.

Two or more parishes may be united for the appointment (s. 5).

Section 6. As to continuance of existing office holders.

Every constable appointed under this Act shall be subject to the authority of the Chief Constable of the County.

Under s. 8, charges are not to be made by constables for parish business.

Under s. 9, fees may be allowed to constables where costs are awarded

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(*g*) This section is amended by 13 & 14 Vict. c. 20.

against the defendant. Such fees to be paid over to overseer in aid of poor rate.

Section 10 enacts that constables appointed under Act shall have power to execute summons or warrant within any part of county, but shall not be compelled to serve any summons or to execute any warrant out of the parish or parishes for which they are appointed.

Section 14 enacts that nothing herein contained shall apply to special constables appointed under the statutes relating thereto, nor to any officer appointed at a court leet or torn.

The section defines the terms "County," "Parish" (*g*), "Constable," "Vestry," and "Overseers."

High Constables.

High constables were formerly appointed for the collection of county rates and other matters. The Act 7 & 8 Vict. c. 33, relieved high constables from the collection of rates and attendance at quarter sessions.

Under it justices of the peace are required to send precepts directly to guardians of unions for the payment of police rates.

The guardians are required to pay such rates, and the county treasurer is to receive the same.

Section 8 provided for the appointment of high constables at special instead of quarter sessions.

The High Constable Act, 1869 (32 & 33 Vict. c. 47), provided for the discharge of the duties heretofore performed by high constables, and for the abolition of such office, with certain exceptions.

Section 1 defines the term "High Constable," which includes any constable of any hundred or other like district, etc.

Section 2 requires that at the January quarter sessions after the passing of this Act, the justices for every county should consider and determine whether it was necessary that the office of high constable should be continued.

Section 5 provides that where there is no high constable, the chief constable is to act in case of claims against the hundred, and the process for appearance in the action and the notice required in the case of the claim shall be served upon the chief constable.

(*g*) "Parish," among other meanings, shall include a place for which a separate poor rate and separate overseer can be made or appointed. "Constable" shall include every petty constable, head-borough, borsholder, tithingman, or other peace officer of like description authorized or required to be appointed for any parish at the date of this Act.

CHAPTER X.—THE POLICE (ENGLAND) ACTS.—(*SYNOPSIS*).

THE County and Borough Police Acts cited as the Police (England) Acts in the fifth schedule of the Police Act, 1890, have, owing to the passing of that Act and other recent legislation, been to a great extent amended, and powers hitherto exercised by quarter sessions are now vested in a standing joint committee of justices and members of the county council.

Upwards of *forty sections* of the Acts referred to have been repealed or to a greater or less extent amended, and important changes have been made in the method of procedure. The Acts cited in the schedule referred to are tabulated and a synopsis of their principal provisions is here given in a consolidated form. An "abridgment" of the various sections referred to will be found in Appendix, *post*.

THE POLICE (ENGLAND) ACTS.

Session and Chapter.	Description.	Short title.
2 & 3 Vict. c. 93- - -	An Act for the establishment of county and district constables.	County Police Act, 1839.
3 & 4 Vict. c. 88- - -	To amend the Act of 1839.	County Police Act, 1840.
19 & 20 Vict. c. 69 - -	To render more effectual the police in counties and boroughs.	County and Borough Police Act, 1856.
20 Vict. c. 2 - - -	Appointment of chief constable for adjoining counties.	County Police Act, 1857.
22 & 23 Vict. c. 32 - -	To amend the law concerning police in counties and boroughs.	County and Borough Police Act, 1859.
28 & 29 Vict. c. 35 - -	To amend the law relating to police superannuation funds—counties and boroughs.	Police Superannuation Act, 1865.

Sections 190 to 194 (inclusive) of the Municipal Corporations Act, 1882, shall for the purposes of the Police Act, 1890, be deemed to form part of the Acts in above schedule.

ESTABLISHMENT OF FORCES.

The *discretionary* powers given to justices for establishment of forces, under the County Police Act, 1839 (*h*), were by County Police Act, 1856 (s. 1), made *compulsory*. The Secretary of State being empowered to make certain rules for government of police (*i*).

Appointment of chief and petty constables is provided for under County Police Act of 1839: chief constable, ss. 4 & 5, petty constables and

(*h*) Section 1, which limited number of constables to be appointed to *one constable to every* 1000 *inhabitants*, is now repealed: Statute Law Revision Act, 1874 (2).

(*i*) Under County Police Act, 1839. See Appendix.

superintendent (*k*) s. 6. "Deputy," s. 7. "Additional" constables (*l*) may be appointed at request and expense of persons applying for same (3 & 4 Vict. c. 88, s. 19).

Punishments.—The chief constable of a county or the watch committee of a borough can *suspend* any constable or *reduce* or *fine* (a week's pay) by way of punishment (County and Borough Police Act, 1859, s. 26).

Privileges and prohibitions.—Police are "restrained" from undertaking "other employment (*m*) for gain or hire" (County Police Act, 1839, s. 10). They are exempted from payment of toll when on duty (County Police Act, 1840. s. 1).

The disability of police as to Voting (Acts of 1856 and 1859) is now removed. See DISABILITY OF POLICE REMOVAL ACT (General Subjects), *post*.

The receipt of "half-pay," prohibited by s. 11 of County Police Act, 1839. is repealed by 50 & 51 Vict. c. 67, s. 14.

Authority and jurisdiction (*n*). —Persons appointed to county police forces shall be sworn as constables before a justice of the county (County Police Act, 1839, s. 8), and shall have all powers and privileges in the county and in liberties, franchises and detached parts of other counties situated within the county, and also *in any county adjoining* to the county for which they are appointed, which any constable duly appointed has within his constablewick by virtue of the common law or any statute.

The provisions of 1 & 2 Will. 4, c. 41 (special constables) shall be deemed to extend to constables appointed under the Act (1839).

Reciprocal powers.—The reciprocal powers of county and borough constables are given in s. 6 of 19 & 20 Vict. c. 69 (Act of 1856). See Appendix. As to liability of county constables to act in boroughs and borough constables to act out of boroughs for which appointed, see Appendix, 22 & 23 Vict. c. 32, s. 2 (Act of 1859).

Although a county may be divided into "police districts," the constables shall be subject to duty in any part of the county (3 & 4 Vict. c. 88, s. 28 (1840)).

Quarter sessions, powers of justices, returns, etc.—As to attendance at quarter sessions, etc., by chief constable, see County Police Act,

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(*k*) Justices (now S.J.C.) may direct number of superintendents to be appointed (where it appears unnecessary to appoint one for each petty sessions divisions) also as to inspectors and sergeants; as to allowances to officers, see Police Act, 1840, s. 26, and Police Act, 1856, s. 7.

(*l*) As to "special constables," see p. 31.

(*m*) Except employment be sanctioned as "police duties" by Secretary of State. Persons interested in liquor traffic are ineligible for police service. See Secretary of State rules, April 26th, 1886, in Appendix.

(*n*) Police have only authority in district for which sworn in, and if called upon to act elsewhere they must be sworn in for the fresh district or else be provided with a warrant properly "backed," but police sent on duty under agreement in accordance with the Police Act, 1890 (s. 25) need not be sworn. In case of "fresh pursuit" a constable with warrant may follow offender, if in actual pursuit, to distance of seven miles from confines of jurisdiction.

1839, s. 17, also as to reports to be made to justices (*o*). Superintendents of divisions are to attend the sessions of justices within their divisions and make like reports to justices.

Constables are required to perform such duties (additional) in counties and boroughs as justices may direct (*p*) (19 & 20 Vict. c. 69, s. 7).

[By a special proviso in Local Government Act, 1888, the power under foregoing section shall continue to be exercised by quarter sessions and standing joint committee, *and may also be exercised by county council*, and nothing in the Local Government Act shall affect the powers of justices or the obligations of constables to obey their lawful orders.]

Returns of force.—The chief constable is, by s. 31, Act of 1840, required to transmit to clerk of peace certain returns showing disposition and numbers of constabulary, the same to be laid before justices.

The superintendents are required to make similar returns to the chief constable.

Returns of crime.—The annual returns required under s. 14, Act of 1856, are now amplified and treated of under the Police Returns Act, 1892 (55 & 56 Vict. c. 38). See title GENERAL SUBJECTS, *post*. The returns are now required at the end of each calendar year, instead of in October, as heretofore.

Expenses, etc.—Section 18 of County Police Act, 1839, requires that "reasonable allowances" be made to chief constable for extraordinary expenses necessarily incurred (*q*). Under s. 24, Act of 1859, a chief officer may recommend a constable for *gratuities* for meritorious action. The amount (*3l.*) mentioned in section referred to is no longer limited, the section being amended by the Police Act, 1890, s. 24.

Neglect of duty, etc.—Any constable who shall be guilty of neglect or violation of duty shall on conviction before two justices be liable to a penalty of 10*l.* (deductable from any salary due) or to one month's imprisonment (County Police Act, 1839, s. 12).

Resignation without notice.—No constable is to resign or withdraw

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(*o*) Reports are also made to the Standing Joint Committee.

(*p*) Justices may direct police to keep order in Assize Court (22 & 23 Vict. c. 32, s. 18).

(*q*) The case of *Stopps* v. *Justices of Northamptonshire*, 51 J. P. 756, and s. 66 of Local Government Act, 1888, are pertinent to matter. In the case referred to (Q.B.D.) the court quashed an order of county justices for payment of damages recovered against a constable for arrest and false imprisonment supposed in the course of duty, but which afterwards turned out to be unlawful. To support such an order the court held that it must be proved :

(1.) That the arrest was ordered by the justices.

(2.) That it was reasonably and properly done in the interests and for the benefit of the county.

Section 66 of Local Government Act, 1888, now provides that all costs incurred by justice or constable in defending legal proceedings taken against him for order made or act done *in execution of duty* shall, to such amount as may be sanctioned by the standing joint committee, be paid out of the county fund.

from duty unless expressly allowed to do so, or unless he shall give one calendar month's notice (County Police Act, 1839).

The section is amended by s. 4 of County and Borough Police Act, 1859. The procedure—notice to treasurer and fine (5*l.*)—is fully set forth in Epitome of Act. See Appendix.

Retaining accoutrements.—Any constable ceasing to hold office and retaining any police clothes or accroutrements is liable on conviction to one month's imprisonment (County Police Act, 1839, s. 14.)

Assuming police dress. To assume dress or character of constable for unlawful purpose renders offender liable to penalty of 10*l.* (County Police Act, 1839, s. 15).

Harbouring police.—A penalty of 5*l.* is imposed upon publicans knowingly harbouring or entertaining any constable when on duty (County Police Act, 1839, s. 16).

Warrants.—The procedure *re* execution of warrants (commitment) is fully set out under 3 & 4 Vict. c. 88, s. 33 (1840). See Appendix.

Station houses.—Police authorities have power to provide station houses and strong rooms, and can borrow money for purpose under ss. 12 and 13, County Police Act, 1840. See Appendix.

19 & 20 Vict. c. 69, ss. 22, 23 contain further provisions thereon (*r*) as also 11 & 12 Vict. c. 101, as to erecting lock-up houses on borders of counties.

Consolidation of forces (*s*).—The procedure and arrangements for consolidation of borough police with county establishment are set forth in s. 14 of County Police Act, 1840. See Appendix.

By s. 5 of Act of 1856, Her Majesty in Council may arrange terms of consolidation, and (by s. 20) the sanction of Secretary of State is required before any agreement made can be determined.

Police districts.—A county may be divided into "police districts" subject to approval of Secretary of State, the "general" and "local" expenditure being duly provided for (County Police Act, 1840, ss. 27, 28). And an order in council may require in particular cases that separate police districts be constituted.

Section 1 of 22 & 23 Vict. c. 32 (1859) empowers justices to consolidate or merge police districts.

Liberties, etc.—All detached parts of counties and liberties are to form part of the county by which surrounded or with which they have the largest common boundary.

Section 2 of County Police Act, 1840, provides for transference of "outlying districts." See also 7 & 8 Vict. c. 61, and 21 & 22 Vict. c. 68.

Section 34 of County Police Act, 1840 (interpretation clause) defines "county" as taken in connection with "liberty" or "franchise." The section also contains a proviso *re* Isle of Ely, and s. 30 of County and Borough Police Act, 1856, contains a proviso as to the soke or liberty of Peterborough and also *re* Cinque Ports, and towns of Winchelsea and Rye.

(*r*) By s. 24 of same Act the provisions of 7 Geo. 4, c. 18, as to disposal of "unnecessary station houses, etc." are extended to this Act.

(*s*) Under the Local Government Act, 1888, the police of boroughs with a population of less than 10,000 are merged in county force.

Finance.—The County Police Act of 1839 (s. 20) provided for the payment of police expenses out of *county* rate, but the Act of 1840 (s. 3) empowered the making of a special *police* rate. The matter of "rating" is dealt with in ss. 4, 5, 6, 7, 8, and 9 (*t*) of Act. See Epitome of Statutes in Appendix. Section 25 of Act provides for assessment when a county is divided and two chief constables appointed also (s. 28). Where a county is divided into "police districts" ss. 12 and 13 of Act provide for the borrowing of money.

Fees.—Sections 16—18 of County Police Act, 1840, were repealed by s. 28 of Police Act, 1859, but the power of justices to settle tables of fees and allowances (subject to approval of the Secretary of State) was retained as far as related to county constabulary. This section (28) is in its turn repealed by the Police Act, 1890, which requires (s. 23) that every police authority shall *at least once in five years* submit for the approval of the Secretary of State a table of fees payable to constables in respect of service of summonses, warrants, etc. (*u*).

Section 11 of County and Borough Police Act, 1859, deals with "fees" in boroughs.

Gratuities.—The Police Act, 1890 (s. 24 and Sched. 4 "Acts repealed") deal with matters of gratuities to constables for "meritorious act" originally dealt with under 22 & 23 Vict. c. 32 s. 24 (1859). So much of the section as limited (to 3*l.*) the amount of reward is repealed.

Government Inspectors of Constabulary.—Section 15 of the County and Borough Police Act of 1856 authorizes the appointment of three persons (*x*) as Her Majesty's Inspectors of Constabulary for England and Wales, who are required to report on the state and efficiency of police to the Secretary of State. The certificate of the Secretary of State that police are efficient is required before a force can participate in the Government contribution (*x*).

Superannuation.—The Police Superannuation Act of 1865 is virtually repealed by the Police Act of 1890. A digest of this latter will be found in Appendix.

(*t*) Portions of s. 8 are repealed by S. L. Revision Act, 1874 (2).

(*u*) See "Fees" s. 23 of Police Act, 1890, given in Epitome of Statutes. Appendix, *post*. See also p. 21, *ante*.

(*x*) One fourth the charge for pay and clothing was formerly paid by the Treasury under s. 16, but all limit in amount of contribution was removed by 38 & 39 Vict. c. 48, and the Police Act, 1890 (s. 17) now provides for the distribution amongst police forces of sums granted out of customs and excise duties for police superannuation.

GENERAL SUBJECTS.

Accessories.

(24 & 25 Vict. c. 94.)

Those who are implicated in the commission of crimes are either principals or accessories. But this distinction exists only in the case of felonies.

An accessory is he who is not the chief actor in the offence, nor present at its performance, but in some way concerned therein either before or after.

An *accessory before the fact* is one who being absent at the time counsels or abets another.

An *accessory after the fact* is one who knowing a felony to have been committed receives or assists the felon (*a*).

Accessories before the fact can be punished as principals. In misdemeanors and treasons there can be no accessories; all implicated are principals.

A *receiver of stolen goods* may be indicted and convicted either as an accessory after the fact or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, but no person howsoever tried for receiving (Larceny Act, 1861, s. 91) shall be liable to be prosecuted a second time for the same offence (Larceny Act, 1861, s. 91).

As to indictment of accessory before conviction of principal, see ss. 1, 2, 3, of Statute, Appendix, *post*.

Principals.

A *principal in the first degree* is the actual perpetrator of the crime. Actual presence is not necessary. A constructive presence is in some cases sufficient, as where one

(*a*) A wife succouring her husband is not punishable as an accessory after the fact, but the husband cannot assist the wife; nor will merely suffering the principal to escape make the party an accessory after the fact. Some actual assistance must be given. *R.* v. *Chapple*, 9 Carrington and Payne, 355.

commits a robbery and another keeps watch. A party may be liable as a principal and be absent, as he that puts poison into anything to poison another.

A *principal in the second degree* is he who is present aiding and assisting with a felonious intent, as in the case of stealing in a shop. If several are acting in concert, some in the shop and some out, those outside are equally guilty as principals of the offence of stealing in the shop. But the offender must be aiding, assisting, and abetting—mere presence is not enough. Principals in the second degree are frequently termed *aiders and abettors*, sometimes *accomplices*. As to evidence of accomplice, see Chap. VI., EVIDENCE, *ante*.

Adulteration.

Adulteration of seeds.—Under 32 & 33 Vict. c. 112, persons are liable to penalties for killing or dyeing seeds, or selling same with intent to defraud.

As to food, see title FOOD AND DRUGS, *post*.

Agricultural Gangs.

The Act 30 & 31 Vict. c. 130, regulates the employment by gang masters of children, young persons, and women in agricultural gangs. Gang masters must be licensed, and a female, if women be employed. The licence is in force for six months. Females shall not be employed in the same gang as males. Regarding children (s. 4), no child can now be taken into employment under age of *eleven* (Education Acts, 1876 and 1893).

Police are not entitled to demand licence.

Animals, Diseases of.

(57 & 58 Vict. c. 57.)

The Diseases of Animals Act, 1894, consolidates and repeals the Contagious Diseases (Animals) Acts, 1878 to 1893. It prescribes the procedure for enforcing the Orders of the Board of Agriculture and the regulations of local authorities who are required to enforce the Act.

Local authorities.—In counties the county council is the local authority, but the council may delegate its powers to a committee or to justices sitting in petty sessions. In municipal boroughs the council is the authority.

The Act contains a variety of provisions as to the course (*b*) to be adopted on outbreaks of cattle plague, foot-and-mouth disease, pleuro-pneumonia, swine fever, etc.; as to slaughter by Board of Agriculture, and payment of compensation (half to three-quarter's value) out of public money (ss. 5—22). The Board may make such orders under the Act as they think fit. The following orders must be referred to for offences too numerous to specify:—The Animals Order, 1886 (No. 3446); the Cattle Plague Order, 1895; the Sheep Pox Order, 1895; the Pleuro-Pneumonia Order, 1895; the Foot-and-Mouth Disease Order, 1895; the Rabies Order, 1897; the Anthrax Order, 1895; the Foreign Animals Order, 1893; the Swine Fever Order, 1894, and (Infected Areas) Order of 1896; the Swine Fever (Infected Zones) Order, 1896; the Markets and Fairs (Swine Fever) Order, 1896; the Glanders or Farcy Order, 1894.

Local orders are also in force relating to various ports and towns.

Offences.—A number of offences are enumerated (s. 53 of Act).

These include failing to give notice of disease; failing to comply with order or regulation prohibiting movement of cattle, carcases, fodder, etc.; obstructing or impeding inspector or constable; improperly disposing of carcases of diseased animal or unlawfully digging up buried carcases; attempting to obtain compensation by fraud (penalties 20*l.*).

Onus probandi.—Where the owner or persons in charge of an animal is charged with an offence against this Act relative to disease or to any illness of the animal, he shall be presumed to have known of the existence of the disease or illness, unless and until he shows to the satisfaction of the court that he had not knowledge thereof, and could not with reasonable diligence have obtained that knowledge (s. 57).

Power to exclude strangers.—Owner or servant may

(*b*) Detail of procedure in all such cases is fully set out in the handbook issued, free of charge, by the Board of Agriculture. Police are at once required to notify to Board of Agriculture the existence of disease. Telegrams can be sent free of charge. Information has also to be sent to the veterinary inspector and to clerk to local authority.

affix to infected premises a notice forbidding persons to enter therein without permission.

Notice to police –isolation, etc. — (1) Every person having in his possession or under his charge an animal infected with disease shall, (A) as far as practicable, keep that animal separate from animals not so affected; and (B) with all practicable speed give notice of the fact of the animal being so affected to a constable of the police force for the police area wherein the animal so affected is. (2) The constable to whom notice is given shall forthwith give information thereof to such person or authority as the Board of Agriculture by general order direct. (3) The Board may make such orders as they think fit for prescribing and regulating the notice to be given to or by any person or authority in case of any particular disease or in case of the illness of an animal, and for supplementing or varying for those purposes any of the provisions of this section (Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 4).

Duties of constables.—(1) The police force of each police area shall (*c*) execute and enforce the Act (57 & 58 Vict. c. 57) and orders thereunder. (2) Where a person is seen and found committing or is reasonably suspected of being engaged in committing an offence against this Act, a constable may without warrant stop and detain him; and if his name and address are not known to the constable, and such person fails to give them to the satisfaction of the constable, the constable may without warrant apprehend him; and the constable may, whether so stopping or detaining or apprehending the person or not, stop, detain, and examine any animal, vehicle, boat, or thing to which the offence or suspected offence relates, and require the same to be forthwith taken back, or into any place or district wherefrom or whereout it was unlawfully removed, and execute and enforce that requisition. (3) If any person obstructs or impedes, or assists to obstruct or impede, a constable or other officer in the execution of this Act or of an Order of the Board, or of a regulation of a local authority, the constable or officer may without warrant apprehend the

(*c*) It is usual for the local authority to appoint special officers of police within each district or division as inspectors under Act, and veterinary inspectors are also appointed.

offender. (4) A person apprehended under this section shall be taken with all practicable speed before a justice, and shall not be detained without a warrant longer than is necessary; and all enactments relating to the release of persons, on recognizances taken by an officer of police, or a constable, shall apply in the case of a person apprehended under this section. (5) The foregoing provisions of this section respecting a constable extend and apply to any person called by a constable to his assistance. (6) A constable shall forthwith make a report in writing to his superior officer of every case in which he stops any person, animal, vehicle, boat, or thing under this section, and of his proceedings consequent thereon. (7) Nothing in this section shall take away or abridge any power or authority that a constable would have had if this section had not been enacted (s. 43).

Dairies, Cowsheds, and Milkshops.

The Local Government Board may make general or special (*d*) orders for registration of dairymen, etc. (*e*), for inspection of cattle in dairies, and for sanitary arrangements of premises. For securing the cleanliness of milk, etc. (*f*), and for protecting it from infection, and for authorizing local authorities to make regulations for these purposes.

Dogs.

As to provisions relating to dogs, see title Dogs, *post*.

Dogs affected with rabies may be slaughtered.

Transit—Food and Water.

Section 23 of the Act requires that proper provision of food and water shall be made at places where animals are shipped and unshipped; also that a proper supply of water shall be provided at railway stations. No animal to remain

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(*d*) Order of June 15th, 1885 (3267), and amending order November 1st, 1886.

(*e*) The Queen's Bench Division held that a farmer who kept cows for the supply of his family and for amusement, and who occasionally allowed his neighbours and a dairyman to have a few quarts of milk, was not a trader or cowkeeper. *Southwell* v. *Lewis*, 45 J. P. 206.

(*f*) The Infectious Disease (Prevention) Act, 1890, contains regulations as to inspection of dairies, and power to prohibit supply of milk after the adoption of that Act by the local authority.

without water for longer periods than twenty-four hours. The exposure to cold of recently shorn sheep in transit is an offence.

Railway lines running through infected areas are exempted from provisions of Act applicable to such places.

Police are not infrequently required to act as inspectors of cattle trucks used on railways passing through their districts and to see that the same are properly cleansed and lime washed as required by the Act.

Customs Acts. Unlawful Landing and Shipping.—(1) If any person lands or ships or attempts to land or ship an animal or thing in contravention of the Act (57 & 58 Vict. c. 57) or orders thereunder, he shall be liable under and according to the Customs Acts to the penalties imposed on persons importing or exporting or attempting to import or export goods, the importation or exportation whereof is prohibited by or under the Customs Acts, without prejudice to any proceedings against him under this Act for an offence against this Act. (2) The animal or thing in respect whereof the offence is committed shall be forfeited under and according to the Customs Acts in like manner as goods the importation whereof is prohibited by or under the Customs Acts.

Re burial of carcases (*g*) washed ashore, see s. 46 of Act.

Interpretation.—"Cattle" means bulls, cows, oxen, heifers, and calves.

"Animals" means (except where otherwise expressed) cattle, sheep, and goats, and all other ruminating animals and swine.

Fairs and Markets.—Regulations may be made under the Act regulating the holding of fairs, markets, etc., in infected areas.

SYMPTOMS OF DISEASES IN ANIMALS WHICH MAY BE READILY DETECTED BY THE UNPRACTISED EYE (*h*).

(**HORSES**) **Glanders.**—A yellowish-white discharge of a sticky, tenacious character comes from the nostril, usually from one only and most

(*g*) To dig up carcases buried by order of Board of Agriculture is an offence (s. 53), and in some cases larceny. *R.* v. *Stacey*, 41 J. P. 212.

(*h*) From notes by Mr. H. Oliver, F.R.C.V.S., President of the British National Veterinary Association.

frequently the left. A hard swelling between the jaws on the side of the discharge about the size of a walnut. There is a cough and general unhealthy appearance. On looking into the nostrils, small holes or ulcers may be seen. The discharge from the nostrils in glanders does not smell badly as is generally supposed.

Farcy.—Several small enlargements may be seen up the legs, in a nearly straight line, or along the hollow of the neck, or about the breast. These enlargements burst. They discharge a little blood-coloured matter, and look red. They increase in number, and are always in a line with each other. They are known as farcy buds. The animal has a general unhealthy appearance, and staring coat. The disease is sometimes accompanied with a discharge from the nose, etc., as in glanders.

(CATTLE) Cattle Plague.—This disease is of a virulent character, and cannot be decided on by an unqualified person. There are no special symptoms which would enable an ordinary observer to distinguish it from other diseases.

Pleuro-pneumonia. An animal suffering from this disease usually separates itself from the rest of the herd, early in the morning or at night, when the air is cold or foggy, returning to the herd in apparent health in the middle of the day. Subsequently the breathing quickens, and the animal becomes feverish and shows signs of pain, with frequent coughing.

Foot-and-mouth disease.—A discharge of saliva (slobber) from the mouth, with a peculiar smack of the lips, is almost sufficient to detect this disease. The animal frequently kicks out one heel as if trying to get rid of some offensive matter. On examining the mouth, large white spots may be seen on the lips and tongue (*i*).

(SHEEP) Small-pox.—Sheep attacked with this disease are feverish, sore, and apparently in pain. On examining the inside of the thighs and fore legs where there is no wool, red patches and pustules will be found similar to small-pox in man.

Scab in sheep.—Sheep affected with this disease, if watched when grazing, will be seen to continually turn round and bite at the sides or back, and rub against any post or rail. A closer inspection shows the wool to be loose and torn, while portions of wool will probably be found entangled in the sheep's teeth, and the skin would be scabby, dry, and unhealthy. If you rub the affected part the animal gives evident signs of pleasure.

Foot-and-mouth disease.—This disease does not often materially affect the mouth of sheep, but they are exceedingly lame; the feet become hot and painful, breaking out between the claws and on the coronet, running a thin liquid, and soon degenerating into a bad form of ordinary foot rot, with which disease this is easily confounded.

(PIGS) Swine Fever.—This disease, commonly called the "purples," "red soldier," etc., is distinguishable by the red or purple appearance of the skin, apparent just before, and still more so, after death. These appearances are more particularly noticeable on the belly and those parts

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(*i*) *Foot-and-mouth disease* affects pigs very much in the same way as sheep; they become very lame.

of the body where the skin is thin, especially the ears. In dark coloured pigs the change of colour is not seen, but eruptions are usually found on the inside of the thighs; there will be loss of appetite, a general tucked-up appearance, either constipation or diarrhœa, and a cough.

Apprentices.

The jurisdiction of justices is confined by the Employers and Workmen Act, 1875, to apprentices bound without premium or with premium under 25*l.* or those bound under Acts relating to the relief of the poor.

A master cannot dismiss an apprentice for misconduct unless the indentures contain a stipulation to that effect. *Phillips* v. *Clift* (*k*).

A dispute about wages will not justify an apprentice leaving his service, nor will personal chastisement, but reasonable ground for believing bodily harm will be inflicted may probably justify leaving the service. *Halliwell* v. *Counsell*, 38 L. T. 176. Counsel in the case referred to contended that there is no authority establishing that a master may chastise his apprentice. A master is bound to provide medical attendance for an apprentice residing with him but not for a servant. *R.* v. *Smith*, 8 C. & P. 153.

Any master who neglects to provide (being legably liable to do so) for any apprentice necessary food, clothing, etc., is liable to fine or imprisonment (Employers and Workmen Act, 1875, ss. 6 to 10).

Any master or mistress who neglects to provide (being liable to do so) for any apprentice or servant necessary food, clothing, etc., or does or causes to be done any bodily harm to such apprentice or servant so that his or her health is permanently injured or life endangered, is guilty of a misdemeanor, and is liable to five years' penal servitude. See 24 & 25 Vict. c. 100, s. 26, Appendix, *post*.

By 38 & 39 Vict. c. 86, s. 6, masters are liable to fine or imprisonment for six months for neglecting to provide for apprentice food, clothing, medical aid, or lodgings, whereby the health of the apprentice is or is likely to be seriously or permanently injured.

Sea Service, Fishery, etc. — Under the Merchant Shipping Act, 1894, s. 109, the master of a foreign going

(*k*) But see also *Learoyd* v. *Brooke*, [1891] 1 Q. B. 431; 55 J. P. 265.

ship before carrying an apprentice to sea is to cause him to appear before a superintendent or authorities appointed under the Act. Section 380 of Act contains special provisions for desertion, absence, disobedience, breach of duty, or unlawful combination on the part of apprentices to "sea fishing."

The Parish Apprentices Acts, 1792, 1816, and 1842, the Parish Officers Act, 1793, and the Poor Law Amendment Act, 1844, contain provisions regarding masters' liability for ill usage, etc., of parish apprentices, as also the Merchant Shipping Act, 1894, s. 107, regarding "sea service."

As to "Workmen" or "Servants" see titles EMPLOYERS AND WORKMEN ACT, and SERVANTS, *post*, also SHOP HOURS REGULATION ACT.

Army Act.

(44 & 45 Vict. c. 58).

The above general statute was passed in 1881 for the discipline and regulation of the army, and was a great improvement on the practice of repeating every year a separate Act. It was intended that the Act (which contains 193 sections), when once passed, should stand as a model or principal Act, and that the legislature should during each succeeding year pass an Army (Annual) Act (*l*) incorporating and continuing the principal Act, adding such corrections and alterations as were necessary. The provisions of the Act which principally concern the police are those which relate to billeting and the apprehension of deserters (*m*). The Act also contains provisions relative to the attestation of recruits by justices (s. 80), the maintenance by a soldier of his wife and children, or any child of which he may be proved to be the father (s. 145), the buying or receiving from a soldier any military clothing or decorations (s. 156). Section 174 relates to canteens, which are exempted from provisions of ordinary statutory law in several respects (*n*).

(*l*) The necessity of passing an annual Act arises from the circumstances that the votes must be passed each year for maintaining the army of the year.

(*m*) See titles BILLETING and DESERTERS (General Subjects). *post*.

(*n*) See LICENSING LAWS, *post*.

The Act of 1889 contains provisions regarding recreation rooms, music, dancing, plays, etc. (s. 7).

Attestation of recruits.—Any person offering to enlist is to be supplied with a notice (in the prescribed form) as to requirements, and is to be taken before a justice, who shall ascertain whether he consent to enlist, and shall not proceed with the enlistment if he considers the recruit under the influence of liquor.

If he consents to be enlisted, the justice, *after cautioning him* (*o*), can receive his attestation on paper and administer oath of allegiance (s. 80).

The master of an apprentice "attested" may claim him under certain conditions if under twenty-one years of age (s. 96).

Children.—A soldier of the regular forces shall be liable to contribute, as in the case of a civilian, towards the support of any child of which he may be proved to be the father, but there can be no execution against his pay or arms (s. 145). No procedure is valid against men under orders for foreign service.

Regimental necessaries.—Any person who, without lawful authority, buys or receives from a soldier any regimental necessaries, clothing, decorations, or stores, shall be liable to fine or imprisonment (Army Act, 1881, s. 156). Any person "found" committing an offence against this section may be apprehended, and search warrant may issue if required.

Criminal procedure.—No officer or soldier is exempt from being proceeded against by the ordinary course of law (*p*) when accused or convicted of any offence (*q*) except such an offence as is declared not to be a crime for the purpose of the provisions of the Army Act (44 & 45 Vict. c. 58, s. 162).

(*o*) False answers on attestation render offender liable to three months imprisonment.

(*p*) Attendance in a *civil* court is not to be considered as "duty under arms," and consequently officers and men must remove their caps when so attending (Order of Court, 1882).

(*q*) "Crime" means felony, misdemeanor, or other offence punishable with fine or imprisonment.

Note.—Soldiers under arrest for *military* crime may, under certain circumstances be temporarily committed to police cells by the military authority (Army Act, 1881, s. 132).

If an officer neglects or refuses an application to deliver over to the civil magistrate any officer or soldier under his command who is accused or convicted as aforesaid (s. 162), or wilfully obstructs, or neglects, or refuses to assist constables, etc., in apprehending any such officer or soldier, such officer shall, if convicted, be guilty of a misdemeanor (44 & 45 Vict. c. 58, s. 162, sub.-s. 33).

In apprehending soldiers for civil offences, in cases where they have to be taken from the barracks, or when on duty, notice shall be given to the commanding officer.

Reserve forces.—The "reserve forces" shall mean the army and militia reserve, also militia, yeomanry, and volunteers.

The Reserve Forces Act, 1882 (*r*), consolidates the Acts relating to the reserve forces. Section 24 contains provisions regarding the service of notices on men belonging to the army or militia reserve.

The police were required, under former Act (1870), to serve notices on men of "reserve forces." This section is now repealed so far as relates to militia, but re-enacted with respect to *local* militia, the police being required to serve notices when desired.

A notice may be served through the post; evidence of such service shall be satisfactory evidence of service; notice may be served in certain cases by publication of same in prescribed manner; constables and overseers are required to comply with Act.

45 & 46 Vict. c. 49, s. 22, contains similar provisions as to service of notices on militiamen.

The publication of notice in the prescribed manner in every parish in the county or area to which the corps belongs shall be considered sufficient notice to every militiaman in corps.

Men of the reserve forces charged with offences under the Reserve Forces Act, 1882, cognizable both by civil and military courts, shall not be tried by a civil court without sanction of military authorities (*s*).

Soldiers and police.—The constabulary should always endeavour to maintain the most friendly feeling with

(*r*) 45 & 46 Vict. c. 48.

(*s*) See also note (*q*), p. 74.

the military stationed amongst them, whether regulars, militia, or volunteers, also with the sailors of the Royal Navy.

If soldiers are guilty of any direct breach of the law, they should be arrested like other offenders; if they are drunk but not riotous the police should inform the guard at the military barracks, or the regimental patrol, and request that they may be taken in charge.

If a quarrel takes place between soldiers in the public streets, a constable should be careful about interfering, unless life is in danger, or civilians are concerned, but a report should be at once sent to the military authorities, the constable remaining on the spot till assistance arrives.

The police should not converse with sentries on duty.

Arrest.

This subject is treated of in Chap. I., p. 7. The following extracts are taken from Stone's Justices' Manual (1897), pp. 125, 128.

Arrest by private individual.—If a felony has been actually committed a party may be arrested by any person on reasonable suspicion of his guilt, but no person can in general be arrested for a mere misdemeanor unattended with violence without a warrant. A private person may apprehend without a warrant on view of breach of the peace and before the affray is over, and deliver offender to a constable.

An action for malicious prosecution is not maintainable if the defendant has merely instigated a police officer to attempt to arrest the plaintiff. *Harris* v. *Warre*, 48 L. J. C. P. 310.

The general rule is "that for the sake of the preservation of the peace any individual who sees it broken may restrain the liberty of him whom he sees breaking it, so long as his conduct shows the public peace is likely to be endangered by his acts." *Timothy* v. *Simpson*, 4 L. J. Ex. Ch. 81.

Arrest by constable.—A constable may arrest without a warrant *on a charge made*, having reasonable ground to suspect that a *felony* has been committed, though none has in fact. If there be not reasonable ground, the constable so arresting will be liable to an action. *Hogg* v. *Ward*, 27 L. J. Exch. 441. Knowledge by a police constable that a warrant had been duly issued for felony was held by the Exchequer Division to be a sufficient ground for reasonable suspicion.

As to telegraphic message (being "struck by lightning," as it is designated amongst thieves) being a justification for arrest, see 33 J. P. 273.

Power is given under various Acts for arrest of persons *found committing* offences—which means found in the act of committing.

An interval of three or four hours is too great to qualify arrest (without warrant) for "false pretences" (*Downing* v. *Copel*); and an interval of two hours for "assault" without continued pursuit cannot be justified (*Reg.* v. *Walker*, 31 J. P. 1).

A constable may apprehend without warrant on view of a breach of the peace, but not after the affray is over, unless there be reasonable grounds for apprehending its continuance or immediate renewal. A constable can apprehend any one obstructing him in the execution of his duty. The warrant must be in the personal possession of the constable in all cases of misdemeanor—or less than felony (*Codd* v. *Cabe*, 45 L. J. 101), otherwise if the person resist he cannot be convicted of assault. Nor can he be so convicted for resisting the execution of an unbacked warrant. *R.* v. *Cumpton*, 44 J. P. 489.

A magistrate appears to enjoy the same latitude as a constable for arrest on reasonable suspicion.

Breaking doors.—A constable may break into a house to suppress an affray or to capture rioters if in immediate pursuit. Even a private individual may do so to prevent murder upon a sufficient cry for assistance; but for the execution of warrants admittance should always first be demanded; and in all cases where the warrant is for misdemeanor. *Lunnock* v. *Brown*, 2 B. & Ald. 592.

Arsenic Act.

(14 & 15 Vict. c. 13.)

The Arsenic Act, 1851, regulates the sale of arsenic with a view to preventing the commission of crime:—

Section 1 enacts that every person who shall sell arsenic shall forthwith enter in a book in the form set forth in Schedule a statement of such sale.

SCHEDULE.

Day of Sale.	Name and Surname of Purchaser.	Purchaser's Place of Abode.	Condition or Occupation.	Quantity of Arsenic Sold.	Purpose for which Required.

The entry shall be signed by the person making the sale, and shall also be signed by the purchaser, unless such purchaser be unable to write, in which case the person making the entry shall add to the particulars the words "cannot write" (*t*).

Section 2 prohibits the sale of arsenic to any person who is unknown to the person selling the arsenic, unless the

(*t*) Where a witness attends, the signature of the witness is required.

sale be made in the presence of a witness, etc. Arsenic cannot be sold to persons under age.

Section 3 of Act contains provisions regarding quantity which may be sold as an admixture of soot with arsenic, etc.

Penalty for infringement of Act, 20*l.*

The Pharmacy Act does not affect the Arsenic Act.

Arson.

"Arson" is the malicious and wilful setting fire to any building. The term does not strictly comprise cases of setting fire to things in or against any building, or to crops, stacks, mines, ships, etc.

An unfinished house is a building within this section.

The statutory provisions relating to the crime (which is not triable at sessions) are contained in the Malicious Injuries Act (*u*). Maximum Punishment—Penal Servitude for life, or imprisonment for two years.

Malice.—The act must be done unlawfully and maliciously, but the malice need not necessarily be against the owner of the property burned. If A. has a malicious intent to burn the house of B. (or to commit any other felony), and without intending it, burn the house of C., he is guilty of arson. If the act is proved to have been done *wilfully* it may be inferred to have been done maliciously until the contrary be proved.

Setting fire.—As to the "setting fire," there must be an actual burning of some part, however trifling, of the house, etc.

Attempt.—It is a sufficient overt act to render a person liable to be found guilty of *attempting* to set fire to a stack under this statute, if he goes to the stack with the intention of setting fire to it, and light a lucifer match for that purpose, but abandons the attempt because he finds that he is being watched.

Assault.

An assault is an attempt by force or violence to do bodily injury to another. A *battery* is any injury whatsoever, be it ever so small, actually done to the person. Every battery includes an assault.

(*u*) 24 & 25 Vict. c. 97. See Appendix, *post.*

Justices may order prosecution by indictment in cases of assault brought before them, if they find the assault or battery complained of to have been accompanied by any attempt to commit felony, or other circumstances which, in their opinion, make it a fit subject for such prosecution.

Justices cannot hear and determine cases of assault, etc., as to which any question shall arise as to title to land, tenements, etc., or as to any bankruptcy or any execution under process of any court of justice.

In order to constitute an assault it is not necessary that the party should receive an injury, but the act must have been done *with a hostile intention*. Merely placing the hand on another's shoulder to arrest his attention is not an assault. *Coward* v. *Baddeley*, 28 L. J. Ex. 260. Threatening to strike a person, coupled with an ability to do so, will constitute an assault; but for a man to strike at another when at such a distance that he cannot possibly touch him is no assault. Where the person is struck, or even touched, the offence is a battery, which includes an assault.

It is not an assault for a parent to inflict moderate chastisement on his child, or a schoolmaster on his scholar. *Re Basingstoke School*, 41 J. P. 118, and *Gardner* v. *Bygrove*, 53 J. P. 743.

An assault may be justified by showing that it was done in self-defence. Mere words do not amount to an assault. Insulting or abusive language, however gross, does not justify blows.

Injuries given and received at prize fights are injurious to the public, and an indictment will be against the parties concerned, and all persons aiding and abetting therein. See *Reg.* v. *Coney*, 46 J. P. 388 and 404.

A claim to trespass in pursuit of a fox will not justify an assault upon a person rightfully obstructing the hunt. See *Paul* v. *Summerhayes*, L. R. 4 Q. B. D. 9; and 42 J. P. 188.

As to liability of chairman of public meeting for assault by ordering disorderly persons to be removed, see *Lucas* v. *Mason*, 39 J. P. 663.

As to assault by constable or doctor in examination of woman charged with concealment of birth, see title CONCEALMENT OF BIRTH, *post*.

Statutory Provisions.—These are contained in 24 & 25 Vict. c. 100. See Appendix, *post*.

Sections 42 and 47 of Act relate to common assault, which is punishable summarily by fine (5*l*.) or imprisonment, and punishable on indictment by imprisonment for one year.

As to assaults on clergymen, magistrates, peace officers, seamen, and assaults to prevent the buying or selling of grain, see ss. 36 to 40.

As to aggravated assaults on females and boys, see section 43.

As to indecent assaults, see title WOMEN AND GIRLS, *post*.

Assault by husband.—58 & 59 Vict. c. 39, s. 5 (1895) provides that if a husband is convicted of an aggravated assault upon his wife within the terms of 24 & 25 Vict. c. 100, s. 43, the justices may, if satisfied that the future safety of the wife is in peril, order that she shall be no longer bound to cohabit with him, and such order has the effect of a decree of "judicial separation," on the ground of cruelty. The justices may order the husband to pay a weekly allowance to the wife, and may give her the legal custody of children under the age of sixteen years.

[Under the Divorce Act (*x*) (20 & 21 Vict. c. 85), s. 21, power is given to justices, in cases of desertion by the husband to grant the wife an order protecting any money or property she may acquire by her own lawful industry, or become possessed of.]

Assaults on police officials.—Persons assaulting police in the execution of their duty are punishable under various statutes. Under the Prevention of Crimes Act (s. 12) they are liable to a fine of 20*l*., or six months' imprisonment, or nine months for subsequent offence within two years.

[This section is (*y*) extended (with lessened penalties) to cases of resisting and obstructing police.]

Assaults on borough constables are punishable under the Municipal Corporations Act, 1882, s. 195. Penalty 5*l*. Similar provisions protect constables appointed under the Towns Police Clauses Act, 1847.

Assaults on special constables are punishable under 1 & 2 Will. 4, c. 41. The provisions of the section are extended to constables appointed under the County Police Acts (*z*) (s. 8) and 3 & 4 Vict. c. 88.

The provisions of 3 & 4 Will. 4, c. 90 (s. 41) protect constables appointed under the General Watching Act.

As to assaults on police executing warrants, see title WARRANTS, *post*.

As to assaults on officers employed in the prevention of smuggling, see 44 Vict. c. 12, s. 12.

Assaults on county court baliffs (*a*) are punishable under County Courts Act, 1888, repealing 9 & 10 Vict. c. 95.

Wounding.—Unlawfully and maliciously wounding, and the infliction of grievous bodily harm is treated of under sections 11, 12, and 20 of the Act 24 & 25 Vict. c. 100. Wounding is of two kinds—*felonious* (s. 18) when there is an intent to murder, maim, etc. (*b*), and *unlawful* (s. 20) when there is no felonious intent.

(*x*) With divorce proceedings the police have nothing whatsoever to do, and should not make themselves the medium of inquiries or communication in divorce cases.

(*y*) See 48 & 49 Vict. c. 75.

(*z*) 2 & 3 Vict. c. 93, s. 8, and 3 & 4 Vict. c. 88, s. 8 ("Additional constables.")

(*a*) See *R.* v. *Briggs*, 47 J. P. 615.

(*b*) This section extends to three species of assault:—(1) Wounding, (2) shooting, or (3) attempting to shoot.

Felonious wounding is not triable at quarter sessions.

Unlawful wounding, or inflicting grievous bodily harm, may be either with or without any weapon or instrument.

On indictment for unlawful wounding.—No *intent* has to be proved to convict of this offence, the accused can on the indictment be found guilty of a common assault.

There may (see s. 47) be an assault occasioning "actual bodily harm" not amounting to unlawful wounding.

To *wound* means to divide the surface of the body, whether externally or internally, such as the inside of the mouth. The instrument by means of which such surface is divided is immaterial, as the statute extends to wounding "by any means whatsoever;" if the skin be not broken, there is no wounding, but, nevertheless, "grievous bodily harm" may have been inflicted.

To constitute *grievous bodily harm*, it is not necessary that the injury should either be permanent or dangerous; if it be such as seriously to interfere with health or comfort, it is sufficient.

Assize and other Courts.

Courts of oyer and terminer (to hear and determine) and general gaol delivery are periodically held in every county in the kingdom. Assizes were formerly held twice in each year. An Act passed in 1876 gave power to unite counties for the purposes of winter assizes. These provisions have since been extended, and now assizes are held *four times a year* for the trial of prisoners. For assize purposes England is divided into eight circuits. Civil actions are also heard at assizes before the court sitting at Nisi Prius (*c*.)

In the metropolitan and city police districts the sessions of the Central Criminal Court (held at the Old Bailey) correspond with the county assizes. 19 & 20 Vict. c. 16, permits the trial at the Central Criminal Court of offences committed out of its jurisdiction.

The Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), provides that crimes which are triable either at assizes or quarter sessions *shall be sent to assizes*. Section 1 provides

(*c*) 14 Edw. 3 c. 16, authorizes a trial before the judge of assize in lieu of the superior court, and gives it the name of a trial at Nisi Prius. The phrase Nisi Prius (signifying "except first") arises thus. Prior to Magna Charta certain civil actions were tried only at Westminster. On judges of assize being appointed to visit counties, it was enacted (13 Edw. 1) that the trial was to be had at Westminster unless the Justices of Assize came first into that county.

that crimes triable at sessions *are to be tried at sessions* and not sent to the next assizes, unless the High Court so orders (s. 4) (*d*).

Quarter Sessions.

General quarter sessions of the peace are held in every county before two or more justices of the peace, one of whom must be of the quorum, once in every quarter of a year, which, by 11 Geo. 4 & 1 Will. 4, c. 70, s. 85, is *the first whole week* after October 11th, December 28th, March 31st, and June 24th. The Quarter Sessions Act, 1894 (57 & 58 Vict. c. 6), gives power to justices to vary these dates fourteen days before or after, so as not to clash with assizes. When holden otherwise than quarterly they are called the general sessions of the peace. By 3 Edw. 3, they had jurisdiction to try all felonies and misdemeanors within their counties, but subsequent statutes confined them to the trial of smaller felonies and misdemeanors. They also hear appeals from the decisions of justices at petty sessions.

Borough sessions were established in boroughs under the Municipal Corporations Act. They are held by the recorders of the respective boroughs once a quarter or oftener, if they think fit, and at times to be fixed by them. Their jurisdiction is over such offences as are cognisable by the county sessions.

Persons charged with any offence which upon a first conviction may be punished by penal servitude for life, as well as those arraigned for the following offences, *cannot be tried at quarter sessions*, but must be committed to the assizes:—Treason, blasphemy, administering, etc., unlawful oaths, perjury, forgery, burglary (*e*), arson, bigamy, abduction, concealment of birth, fraudulent bankruptcy, sedition and libel, conspiracies to commit such offences, stealing or injuring judicial records, wills, or titles.

(*d*) In a Home Office circular (December, 1896) attention was drawn to the number of cases triable at sessions, which were sent for trial at assizes. It was inferred by the judges of the Supreme Court that justices did not sufficiently avail themselves of the Assizes Relief Act, but treated the fact of assizes preceding quarter sessions as a "special reason" for commitment to assizes.

(*e*) But see now the Burglary Act, 1896, which allows offences to be tried at sessions if the case be not a grave or difficult one.

Petty Sessions.

Petty sessions are sittings of one or more justices of the peace, who are empowered by statute to try in a summary way and without a jury certain minor offences.

The powers of justices in petty sessions are defined in the Summary Jurisdiction Acts of 1848 (Jervis's Act) and 1879. See Appendix, *post.*

The Summary Jurisdiction Act of 1879 considerably extends the power of magistrates, enabling them to deal summarily with indictable offences. Two justices sitting in petty sessions or one stipendiary magistrate constitute "a court of summary jurisdiction" under the Act.

Regarding "occasional court-houses," see s. 20, Summary Jurisdiction Act, 1879, Appendix, *post.*

County Courts.

County courts have jurisdiction in civil proceedings (certain cases excepted) in which the amount claimed or the value of the property in issue is under 50*l.*, unless the parties apply for removal to superior courts. The proceedings are before the judge without a jury, unless application be made for a jury. A jury in a county court consists of five men.

Contempt of court is a disobedience to or disregard of the rules, orders, process, or dignity of a court which has power to punish for such offence by attachment. Every judge of a court of record has power immediately to commit for a contempt committed in his presence. A justice cannot commit for contempt of court; he can only order the expulsion of the offender. But if a witness refuses to be examined on oath, or to take such oath or affirmation, or to answer questions put to him, he may be committed to prison for seven days.

Services of police.—The police attend all criminal courts; they are also bound to assist sheriff's officers when called upon, and county court bailiffs providing they are acting under proper writ or authority.

Under 28 Vict. c. 36, revising barristers are entitled to the services of the police at their courts, as are also the Commissioners of Fisheries when holding a court under the Salmon Fisheries Act, 1865.

Bail.

Admitting to bail consists in the delivery of a person to his sureties on their giving security for his appearance at the time and place of trial. Bail may be allowed by a judge or

magistrate or in certain cases by a police officer. To refuse or delay to bail any person bailable is an offence against the liberty of the subject.

When allowed.—It is optional with a magistrate to accept bail in all felonies save treason, and in any of the following misdemeanors:—obtaining property by false pretences; receiving stolen property; perjury; concealment of birth; indecent exposure; riot; assaults on police officers; or any misdemeanor, the costs of which may be allowed out of the county rate. *In other misdemeanors* it is imperative on the magistrates to admit to bail (11 & 12 Vict. c. 43, s. 23). Coroners can admit to bail persons charged with manslaughter (*f*). See also title CHILDREN as to necessity of allowing bail under 57 & 58 Vict. c. 41, s. 4; also Home Office Circular, January 1889, as to bail of children under 14.

Three elements are to be taken into consideration in considering the bail:—(1) The gravity of the crime; (2) the weight of the evidence; and (3) the severity of the punishment with regard to the probability of the defendant's appearance at the trial.

The amount of bail is discretionary with the magistrate; but it is illegal to require *excessive* bail.

Who may be bail. — A householder of sufficient property (*g*) may be bail. Infants, married women, or persons convicted of infamous crime cannot be bail. The usual number of bail is two. The sureties need not act as such for a longer time than they wish, but *may surrender accused* if they fear that he or she is about to abscond, or they may apply to the magistrate for a warrant to arrest accused, although in urgent cases a police officer may arrest without warrant.

Bail by police officers.—Inspectors, or other officers in charge of police stations may admit to bail persons in custody for offences which are not of a "serious nature." See s. 38 of Summary Jurisdiction Act, 1879, Appendix, *post*.

(*f*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 7.

(*g*) The Q. B. Div. (*per* L. C. J.) severely commented on the acceptance as bail of the solicitor of the accused. *R.* v. *Scott-Jervis*, November 18th, 1876.

Bakehouses.

(41 Vict. c. 16, and 46 & 47 Vict. c. 53.)

Inspectors appointed by the local authority can enforce the provisions of Acts relating to bakehouses.

The Acts apply to bakehouses in places containing 5,000 inhabitants. Provision is made for cleanliness, ventilation, and sanitation generally. No closet, drain pipe, or cistern is to be within bakehouses occupied subsequent to June, 1883. Inspectors appointed by the local authority shall have the same power to enter and inspect premises as inspectors under the Factory and Workshop Acts.

Bankrupts.

The Debtors Act, 1869 (32 & 33 Vict. c. 62) (*h*), abolished imprisonment for debt, except in default of obedience to an order of court, and provided for the punishment of fraudulent bankrupts. Under the Act jurisdiction in offences under the bankruptcy laws is given to justices and recorders of sessions in certain cases, and under this Act and the Bankruptcy Act of 1883, bankrupts and debtors committing certain offences are guilty of felonies and misdemeanors.

A man may become bankrupt on a bankruptcy petition being presented to the court by one or more creditors (or by the debtor himself) for not less than 50*l*.

A receiving order may be made against the debtor, and this may ultimately result in bankruptcy.

A bankruptcy petition is granted on one or more "acts of bankruptcy"; also "act of bankruptcy" may show that the debtor is insolvent, or that he intends to defraud his creditors by suspending payment, departing from England, etc.

A debtor commits a criminal offence, and is termed a "fraudulent debtor" if, with intent to defraud his creditors,

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(*h*) Section 20 of Act repeals so much of the Quarter Sessions Act, 1842, as excludes offences under the bankruptcy laws from the jurisdiction of justices and recorders at sessions, and gives them jurisdiction over same.

he commits certain acts which are indictable as misdemeanors, and enumerated in ss. 11 and 12 of the Debtors Act, 1869, and s. 31 of the Bankruptcy Act, 1883.

The chief offences are:—Neglecting to make full discovery of estate to the administrating trustee, or to deliver up property, books, papers, etc.; making any material omissions in a statement relating to affairs; failing to inform trustee of a false debt; destroying or falsifying papers or documents relating to affairs; attempting to account for any property by fictitious losses; concealing or removing property to the value of 10*l.* within four months before the presentation of the petition; obtaining property on credit by false representations; pawning or disposing of property obtained on credit, or otherwise than in the ordinary way of trade; or making false representations in order to obtain consent of creditors to an agreement; or by s. 31 of the Bankruptcy Act of 1883, an undischarged bankrupt obtaining credit to the extent of 20*l.* or upwards from any person without informing such person that he is an undischarged bankrupt.

Any person shall in each of the cases following be deemed guilty of a misdemeanor:—

If in incurring a debt or liability he has obtained credit under false pretences or fraud, or if with intent to defraud creditors he has made any gift or transfer of property or any charge thereon, or transferred or otherwise disposed of property, or concealed or removed any property within two months before or after any unsatisfied judgment or order (Debtors Act, 1869, s. 13). A creditor fraudulently making a false claim commits a misdemeanor (s. 14).

Arrest.—The court may cause a debtor to be arrested, and his books, papers, money, and goods to be seized, if, after service of notice or presentation of a petition, it appears that there is probable reason for believing that he is about to abscond (*i*); or if, after presentation of a petition, he is about to remove his goods to prevent possession being taken of them, or has concealed, or is about to conceal or destroy any of his goods books, documents, or writings; or if, after service of a petition on him, or after a receiving order made against him, he removes goods above the value of 5*l.*, without the leave of the official receiver or trustee, or without good cause shown, fails to attend any examination ordered by the court (s. 25, Act of 1883).

Prosecutions.—The court exercising jurisdiction in bankruptcy, on receiving the opinion of a trustee that the debtor

(*i*) Any one who, after presentation of the petition, or four months before it, fraudulently absconds or attempts to abscond from England with any of his property to the value of 20*l.*, commits a felony. *Punishment*, two years' imprisonment (s. 12).

has been guilty of an offence under the Debtors Act, 1869, or the Bankruptcy Act, 1883, or on the representation of a creditor or member of the committee of inspection that there is reasonable ground to believe him so guilty, shall, if there is reasonable probability of the debtor being convicted, order the trustee to prosecute.

Making a *false declaration or statement* under the Bankruptcy Act is punishable under 32 & 33 Vict. c. 62, s. 14, and 56 & 57 Vict. c. 54.

Barbed Wire.

By the Barbed Wire Act, 1893, it is enacted that where there is on any land adjoining a highway within the county or district of a local authority, a fence made with barbed wire, or in or on which barbed wire has been placed, *and such barbed wire is a nuisance* to such highway, it shall be lawful for such local authority to serve notice in writing upon the occupier of such land requiring him within a time therein named (not to be less than one month nor more than six months after the date of the notice) to abate such nuisance. If on the expiration of the time stated in the notice the occupier shall have failed to comply therewith, it shall be lawful for such local authority to apply to a court of summary jurisdiction, and such court, if satisfied that the said barbed wire is a nuisance to such highway, may by summary order direct the *occupier* to abate such nuisance; and on his failure to comply with such order within a reasonable time, the local authority may do whatever may be necessary in execution of the order, and recover in a summary manner the expenses incurred in connection therewith (56 & 57 Vict. c. 32, s. 3). "Barbed wire" means any wire with spikes or jagged projections. "Nuisance to a highway" as applied to barbed wire means barbed wire which may probably be injurious to persons or animals lawfully using such highway. Local authority means any county council, any urban sanitary authority, or any sanitary authority in London, or any highway board.

Bastardy.

The police are required to serve summonses and execute warrants.

The mother of a child not born in wedlock may apply to

a justice of the division in which she resides for a summons against the alleged father (*j*) within twelve months after the birth of the child or before its birth, or at any time after birth if the father has paid for maintenance before child is twelve months old, or if he has been absent from England, within twelve months after his return.

The justices can, by an affiliation order, require the putative father to pay a sum not exceeding 5*s*. a week until the child is thirteen years of age, or sixteen, if so ordered.

If the payments are not regularly made, a warrant may be issued, and the amount due and costs recovered (*k*) by distress: and in default of sufficient distress, any two justices may commit the father for not exceeding three calendar months (35 & 36 Vict. c. 65, s. 4).

Liability of soldiers.—Under the Army Act, 1881, s. 145, a soldier of the regular forces is liable to contribute to the maintenance of his wife and children, and also to maintain any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier, but execution in respect of any such liability shall not issue against his person, pay, necessaries, etc., nor will he be liable to be punished for the offence of deserting his wife and family, and leaving them chargeable to any place or union. Under sub-s. 2, a copy of any order, etc., made against a soldier is to be sent to the Secretary of State. Where a proceeding is instituted against a soldier of the regular forces under any Act, or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, and such soldier is quartered out of the jurisdiction of the court, or out of the petty sessional division in which the proceeding is instituted, the process shall be served on the commanding officer of such soldier, and a sum of money shall be handed to the commanding officer sufficient to enable the soldier to attend the hearing of the case and return to his quarters.

No process whatever under any Act or at common law in any proceeding in this section mentioned shall be valid against a soldier of the regular forces if *served after such soldier is under orders for service beyond the seas* (s. 145).

Betting Acts.

(16 & 17 Vict. c. 119, and 37 Vict. c. 15).

The Betting House Act of 1853, referred to as the principal

(*j*) No order can be made against the alleged father unless the evidence of the mother be corroborated *in some material particular*. This may be by letters written by putative father or money paid. (*R.* v. *Berry*, 28 L. J. 86; 23 J. P. 82.

(*k*) A constable has no authority to receive the amount and discharge the defendant.

Act, was amended by the Betting Act of 1874, and both Acts are cited together as "The Betting Acts, 1853 and 1874."

The Acts of 1853 and 1874 prohibit any house, office, room, or other place being kept or used for the purpose of betting between persons resorting thereto (*m*), or for the purpose of any money or valuable thing being received by the owner, occupier, servant or other person, on any event or contingency of or relating to any race, fight, game, sport, or exercise. Every house, office, etc., so used is declared to be a "*common nuisance*," and shall be deemed to be a common gaming house, and within the meaning of the Gaming Act, 1845.

Penalty for keeping or using such house or place, 100*l.*; for receiving deposits on bets, 50*l.*; or in both cases imprisonment. Money deposited is recoverable by civil action. See 57 J. P. 119; see also title GAMING, *post*.

"Places."—The following have been held "*places*" within the meaning of the Betting Acts:

A tree in Hyde Park under which a person stood; a temporary structure on a racecourse (*Shaw* v. *Morley*, 37 L. J. 105); a large umbrella stuck in the ground and used as a tent (*Bows* v. *Fenwick*, 43 L. J. 107); a detached box in a betting ring (*Galloway* v. *Maries*, 51 L. J. 53); an inclosed field for pigeon shooting where admission was paid for (*Eastwood* v. *Miller*, 43 L. J. 139); also a garden where foot-races were going on. *Haigh* v. *Mayor of Sheffield*, 44 L. J. 7; 39 J. P. 230. But where the person betting has no fixed or particular location in the field and is not the owner of the field, but is merely walking about in a reserved portion and making bets, he is not liable to be convicted. *Snow* v. *Hill*, 14 Q. B. D. 588; 49 J. P. 149. This case was distinguished from *Eastwood* v. *Miller*. A court specially formed of HAWKINS, J., and four other judges sat December, 1896, to hear three cases affecting the law of betting. The point in one case (*Hawke* v. *Dunn*), was

(*l*) The "resorting" to a house for the purpose of betting must be actual and physical; sending letters and telegrams is not "resorting thereto." The Act does not apply to betting between members of a *bonâ fide* club not established for the purpose of betting, although betting is one of the main features of the institution and persons use the club premises for the purpose of betting with each other (*Downes* v. *Johnson*, [1895] 2 Q. B. 203; 59 J. P. 487), see also *Oldham* v. *Ramsden*, 44 L. J. 2[illegible]. Sir H. POLAND, Q.C., has advised that it is illegal to allow baccarat to be habitually played even in a *bonâ fide* club (33 Sol. J. 748).

whether a professional betting man, who carried on his business at the Hurst Park race meeting on the one-pound ring in a place called Tattersall's enclosure, an open space surrounded by iron railing, and did not confine himself to any fixed spot for the purpose of his operations but moved about within its limits, was guilty of an offence. The prosecution was promoted by the Anti-Gambling League through its secretary. The ruling of court was favourable to contention of league. A more authoritative exposition of the law was subsequently sought in the case of *Powell* v. *The Kempton Park Racecourse Co.*, which reversed the position, the decision of the Court of Appeal overruling *Hawke* v. *Dunn*. A summary of the judgment delivered will be found in Appendix, *post*. BRUCE, J., held at Liverpool Assizes (December, 1896), that an undefined part of the public footpath at the corner of a street was not a place within the meaning of the Act.

The habitual use of a house by a bookmaker for *paying* money won over bets is not an offence within s. 3 of the principal Act. *Bradford* v. *Dawson*, December, 1896, 41 Sol. J. 160 (*m*).

Advertising.—Under s. 7 of the principal Act, it is an offence to exhibit placards or hand-bills, or otherwise advertise betting houses. Penalty, 30*l*.; and by s. 3 of the Act of 1874 a similar penalty attaches in cases where any letter, circular, telegram, placard, hand-bill, card, or advertisement is sent, exhibited, or published, whereby

(1) It is made to appear that any person will give information or advice with respect to any bet or wager, or will make on behalf of any other person any such bet or wager; or

(2) With intent to induce any person to apply to any such betting house for information, etc.; or

(3) Inviting any person to make or take any share in or in connection with any such bet or wager.

[As to what is a "wager," see cases collected at 40 J. P. 227. As to "cheating at play," see title CHEATING, *post*.]

RAIDS BY POLICE.

Warrant.—Any justice on complaint on oath that there is reason to suspect any place to be used as a betting house,

(*m*) While the law does not sanction betting it nowhere declares it to be criminal; all it does is to condemn betting as carried on in certain specified conditions [*per* RUSSELL, L.C.J.] *Reg.* v. *Brown*, [1894] L. R. 1 Q. B. 119; 59 J. P. 485.

may issue a warrant to any constable to enter with assistance, and if necessary with force, *and arrest and search any person therein* (*n*), and to seize all lists or other documents relating to racing or betting found therein.

[The warrant may authorize search of premises licensed under Intoxicating Liquors Act.]

Metropolitan police.—The Commissioner of Metropolitan Police may, on report of a superintendent that he believes on good grounds that any house, office, room, or place within the metropolitan police district, is kept or used as a betting house or office, by order in writing authorize the superintendent and constables to enter any such place, and if necessary to force an entrance and evict all persons, and to seize all lists, cards, or other documents relating to racing or betting found in such house or premises.

Obstruction.—The fact that the entrance of a peace officer is *obstructed or delayed*, or that the place is found provided with means of gaming, or of concealing instruments of gaming (*o*), is evidence that the house is a common gaming house. Penalties are imposed for such obstruction, and for such other offences (17 & 18 Vict. c. 38).

Betting and Loans (Infants) Act, 1892.

The sending of any circular, notice, or advertisement to an infant inciting to borrow money is a misdemeanor, as is also the sending of circulars inciting to betting or wagering. If any such circular be sent to any person at any university, school, or place of education, the sender shall be deemed to have known that the person was an infant, unless he proves that he had reasonable grounds for believing otherwise (55 & 56 Vict. c. 4).

Welshing.

A decision of the Queen's Bench whereby what is commonly known as "welshing" was declared to be felony

(*n*) The powers of the police are not restricted under the words of the section "all such persons found therein" to all such persons as are actually engaged in contravening the Act, or in aiding and abetting the contravention thereof. *Anderson* v. *Mayor of South Shields*, 46 J. P. 825.

(*o*) Justices had ordered tickets, books, etc., seized under warrant to be destroyed as "instruments of gaming" (Gaming Act, 1845), but the Queen's Bench Division ordered them to be given up. *Reg.* v. *Willcock*, 54 J. P. 9.

was given in the case of *The Queen* v. *Buckmaster*, 20 Q. B. D. 182. The prisoner was at a race meeting offering to lay odds against different horses. He made a bet with the prosecutor laying odds against a particular horse, and the money for which the prosecutor backed the horse was deposited with the prisoner. The prosecutor admitted that he would have been satisfied if he did not receive back the same coins. The horse won, but the prisoner went away with the money; and afterwards when the prosecutor met him he denied having made the bet. The prisoner was convicted of larceny and a case was reserved, the question being whether there was any evidence to be left to the jury: Held, that as it appeared that the prosecutor parted with his money with the intention that in the event of the horse winning it should be repaid, while the prisoner obtained possession of the money fraudulently, never intending to repay it, in any event there was no contract by which the property in the money could pass, and therefore there was evidence of *larceny by trick*. The intention was to steal, not to contract. In delivering judgment Lord Coleridge, C.J., said: "The true view is that the property in the money was not intended to pass to the prisoner. In *Reg.* v. *Robson* (R. & R. 413), the circumstances were like those of the present case. It was held there that the taking was felonious because the parting with the money was obtained by fraud and only the possession and not the property passed.'

Bicycles.

The Local Government Act, 1888 (s. 85), repeals the powers of local authorities to make bye-laws regulating the use of bicycles, tricycles, and other similar machines. These vehicles are declared to be "*carriages*" within the meaning of the Highway Acts, and the following *additional* regulations are to be observed by any person or persons riding or being upon any such carriage:—

During the period between one hour after sunset and one hour before sunrise every person riding or being upon such carriage shall carry attached to the carriage a lamp, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted as to afford adequate means of signalling the approach or position of the carriage.

As to non-liability of cyclist to *arrest* for offence (unlighted lamp), see *Hatton* v. *Treesby*, Q. B. D., August 29th, 1897, *Times* Law Report.

Upon overtaking any cart or carriage, or any horse, mule, or other beast of burden, or any foot passenger being on or proceeding along the carriage way, every such person shall, within a reasonable distance from and before passing such cart or passenger, by sounding a bell or whistle, or otherwise, give audible and sufficient warning of the approach of the carriage. Penalty, 40*s*. (51 & 52 Vict. c. 41, s. 85).

Bigamy.

For statutory provisions, see s. 57 of 24 & 25 Vict. c. 100, Appendix, *post*:—"Whosoever being married shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland, or elsewhere," commits the offence. *Felony*: Punishment, seven years' penal servitude or two years' imprisonment; not triable at sessions.

Upon an indictment for bigamy, the prosecutor must prove—(1) the two marriages (*p*), (2) the identity of the parties, (3) that the first wife (or husband) was alive at the time the second marriage was solemnized, (4) and (if she has been absent for seven years) that the prisoner knew that she was alive.

The first wife is not a competent witness to prove any part of the case, either for or against her husband, but the second wife is.

As to the first marriage being valid without due publication of banns, see *R.* v. *Clark*, 11 L. T. 429; 31 J. P. 785. If the banns be published in a wrong name—both parties knowing this—for the purpose of a clandestine marriage, the marriage is void. *Wormald* v. *Neale*, 19 L. T. 93.

Bonâ fide belief on reasonable grounds in the death of the husband or wife before the second marriage is a good defence, although the seven years have not expired. *R.* v. *Tolson*, 23 Q. B. D. 168; 58 L. J 97; 54 J. P. 4 (*q*).

Upon the charge of bigamy, as a rule a warrant should be obtained before an arrest is made.

Billeting.

Under the Army Act, 1881 (44 & 45 Vict. c. 58), the constabulary are required to act as billet masters, when so called upon by the military authorities (*r*).

A person holding a military office or commission is not

(*p*) It is immaterial "whether the second marriage should have taken place in England, Ireland, or elsewhere."

(*q*) This case was reserved for consideration of all the judges.

(*r*) In the absence of constable a justice may perform the duties (ss. 120, 190).

to be concerned as a justice or constable in billeting soldiers under his command (s. 120).

"Every constable for the time being in charge at any place in the United Kingdom mentioned in the route issued to the commanding officer of any portion of Her Majesty's regular forces, shall, on the demand of such commanding officer, or of an officer or soldier authorised by him, and on production of such route, billet on the occupiers of victualling houses and other premises specified in this Act as victualling houses in that place, such number of officers, soldiers, and horses entitled under this Act to be billeted as are mentioned in the route, and stated to require quarters" (s. 103).

Liability to billets.—The provisions with respect to victualling houses shall extend—to all inns, hotels, livery stables, or ale houses, also to the sellers of wine by retail to be drunk in their own houses or places thereunto belonging, and to all houses of persons selling brandy, spirits, or strong waters (*s*), or cider or metheglin by retail, and the occupier of a victualling house, or any such house as aforesaid, *shall be subject to billets* under this Act, and the premises of such occupier are in this Act included under the expression "victualling house."

An officer or soldier *shall not be billeted* (s. 104):—

(1) In any private house; (2) in any canteen; (3) nor on vintners of the city of London; (4) nor in house of distiller of brandy or strong water who does not permit tippling in such house; (5) nor in the house of any shopkeeper whose principal dealing is more in goods than in brandy or strong water, if shopkeeper does not permit tippling in house; (6) nor in a house of a person licensed only to sell beer or cider not to be consumed on premises; (7) nor in the house or residence of any foreign consul.

All officers and soldiers of Her Majesty's regular forces, all horses belonging to regular forces, and officers' horses for which forage is drawn, are entitled to billets (s. 105).

The provisions of the Act regarding billeting apply also to the auxiliary forces when subject to military law (s. 181).

Accommodation.—The victualler shall furnish lodging and attendance for the officer; lodging, attendance, and food for the soldier; and stabling and forage for the horse, in accordance with Schedule to Act.

But the victualler may, subject to the approval of the constable providing the billets, provide *good and sufficient*

(*s*) This does not embrace a beerhouse.

accommodation elsewhere in the immediate neighbourhood. An innkeeper is liable to penalties for not receiving number of men billeted, even though in excess of numbers on billet list kept under s. 110. *Sharratt* v. *Scotnay*.

Payment.—The licensed victualler shall be paid for the accommodation provided before the departure of the officer or soldier, or once in every four days. Or if upon (*t*) a sudden order to march the officer or soldier is unable to pay, he shall sign and transmit to the Secretary of State an account of the expenses (s. 106).

Billet lists.—The police authority for any place may cause annually a list to be made out of all keepers of victualling houses liable to billets under this Act, specifying the situation and character of each house, and the number of soldiers and horses which may be billeted there.

The police authority shall cause such list to be kept at some convenient place, open for inspection by persons interested, and any person who feels aggrieved by being entered to receive an undue proportion of officers, soldiers, or horses, may complain to a court of summary jurisdiction, and the court may order the list to be amended in such manner as the court may think just (s. 107).

List of carriages.—The police authority for any place may cause annually a list to be made out of all persons liable to furnish carriages and animals under this Act, with number and description of carriages and animals; and where a list is so made, any justice may by warrant require any constable having authority within such place to give from time to time on demand by an officer or non-commissioned officer under this Act orders to furnish carriages and animals, and such warrant shall be executed as if it were a special warrant issued in pursuance of this Act on such demand, and the orders shall specify the like particulars in such special warrant (s. 114).

Sections 112 to 121 contain provisions for the issue of warrants by justices for the impressment of carriages, animals, and drivers for the conveyance of regimental

(*t*) In case of failure to pay, disturbance, or ill usage, application can be made to Secretary of State (s. 119).

baggage and stores on the march, the same to be paid for at proper rates. Various penalties are imposed for refusing or neglecting to obey warrants so issued.

Regulations as to grant of billets. — The following regulations shall be observed with respect to billeting (s. 108) :—

1. No more billets shall be ordered than there are officers, soldiers, and horses present to be billeted.

2. All billets when made out by the constable shall be *delivered into the hands* of the commanding officer, or non-commissioned officer who demanded billets, or officers authorized by commanding officer.

3. If a victualler *feels aggrieved* owing to undue billeting, he may apply to a justice or court of summary jurisdiction, and the court or justice may, if it seems just, order removal elsewhere of persons or horses billeted.

4. A constable having authority in place mentioned in route may *billet* in adjoining county or elsewhere, if *within one mile* of place mentioned in the route, unless some constable having authority in such locality undertakes the duty.

5. The regulations with respect to billets contained in the *Second Schedule* to this Act shall be duly observed by the constable. See *infra*.

6. A justice may, on request of an officer or non-commissioned officer authorized to demand billets, *vary a route* by adding or omitting any place, and may *direct billets to be given above one mile* from the place mentioned in the route.

7. A justice may require a *constable to give an account* of the number of persons and horses billeted, and on whom and where billeted.

The Second Schedule to Act contains the following further regulations as to billets :—

1. When troops are on the march they shall not be billeted *above one mile* from the place mentioned in route.

2. Care shall be taken that billets be made out *to the less distant victualling houses* if suitable, before billets be made out for those more distant.

3. If possible *each man and his horse* shall be billeted on the *same victualling house.*

4. And except in case of necessity *one soldier* shall be billeted where there are *two horses*, two soldiers where four horses, and so in proportion.

5. Except in case of necessity a soldier and his horse shall not be billeted at a greater distance apart *than* 100 *yards.*

6. When soldiers and horses are billeted on a *victualler who has no stables*, on written requisition of a commanding officer, the constable shall billet soldiers and horses, or horses only, on some other victualler who has stables, and the latter may recover a proper allowance from the owner of house relieved.

7. An officer may *allot the billets* among the troops as he thinks expedient, and may vary such allotment.

8. The commanding officer may, where practicable, require not less than *two men* to be billeted *in one house.*

By Second Schedule to Act the keeper of a victualling house is obliged, if required, to provide each soldier billeted on him with *one hot meal on each day*. The schedule contains certain provisions regarding length of time the victualler is so liable, quantity of food to be provided, etc., viz., not exceeding 1¼ lb. meat (uncooked), 1 lb. bread, 1 lb. potatoes, 2 pints small beer, vinegar, salt, and pepper; also quantity of forage for horse.

The following is the maximum to be paid for food, lodging, etc., as per Schedule of Act (1896) referred to :—

SCHEDULE.

Accommodation to be provided.	Maximum price.
Lodging and attendance for soldier where hot meal provided	4*d.* per night.
Hot meal as specified Part I. of 2nd Schedule to Army Act	1*s.* 3½*d.* each.
Breakfast as specified	1½*d.* each.
Where no hot meal furnished, lodging and attendance, candles, vinegar, salt, and use of fire and necessary utensils for dressing and eating meat	4*d.* per day.
10 lbs. of oats, 12 lbs. of hay, and 8 lbs. of straw per day for each horse	1*s.* 9*d.* per day.
Lodging and attendance for officer	2*s.* per night.

Note.—An officer shall pay for his food.

Offences by police.—If a constable commits any of the offences following, he is liable to a fine varying from 40*s.* to 10*l.* (s. 109) :—

(1.) Billeting any officer, soldier, or horse, on any person not liable to billets without consent of such person. (2.) Receiving, etc., money to *exempt*, etc., any person from liability to billets. (3.) Billeting on a person or premises without consent of such person any person or horse *not entitled* to be billeted. (4.) Neglecting or *refusing*, after sufficient notice, to give *billets* demanded for a person or horse entitled.

Offences by licensed victuallers. — Victuallers committing any of the offences following are liable to fines varying from 40*s.* to 10*l.* (s. 110) :—

(1.) Refusing or *neglecting to receive* a person or horse duly billeted on him. (2.) Giving any *money, etc., to any constable* to relieve him of

liability to billets. (3.) Giving to any officer or soldier billeted upon him any money, etc., *in lieu of receiving* such officer or soldier.

Officers and soldiers are subject to penalties for various offences under s. 111 of the Act, as are other persons for forging routes, and making fraudulent claims (s. 121); and application may be made to a court of summary jurisdiction by keepers of victualling houses, or owners of carriages or horses, respecting payment of any sums due to them left unpaid by any officer or soldier, or respecting any ill-treatment, etc., received from any officer or soldier billeted on them (s. 119).

Billiards.

(8 & 9 Vict. c. 109.)

Justices can grant billiard licences at their licensing sessions (s. 10 of Act).

Power of entry.—It shall be lawful for any constable to enter into any house, room, or place where any public billiard table is kept as often as they shall think proper (s. 14).

Every person keeping any public billiard or bagatelle board, or instrument used in any game of like kind for public use, without being duly licensed so to do, and not holding a victualler's licence, is liable to a penalty of 10*l.* a day, or one month's imprisonment with hard labour.

Under s. 12 the holder of a billiard licence —

Shall put and keep up the words "licensed for billiards" in some conspicuous place near door, and on outside of house;

Shall not permit drunken or disorderly conduct in his house;

Shall not allow the consumption of excisable liquors (*u*) in house by persons resorting thereto;

Shall not knowingly suffer any unlawful game therein;

Shall not allow persons of notoriously bad character to frequent premises;

Shall not allow play to take place in house after one and before eight o'clock in the morning; or on Sunday, Christmas Day, Good Friday, or public fast day or thanksgiving;

Shall maintain good order and rule on the premises.

(*u*) Beer is not an excisable liquor within the meaning of this prohibition. *Jones* v. *Whittaker*, 39 L. J. M. C. 139.

Under s. 13 licensed victuallers holding billiard licences are subject to penalties if they allow persons (even though lodgers) to play at any billiard table or bagatelle board at any time when such premises are closed for the sale of intoxicating liquors. *Ovenden* v. *Raymond*, 40 J. P. 727.

Birds.

By the Wild Birds Protection Act, 1880 (*x*) (43 & 44 Vict. c. 35), any person who between March 1st and August 1st in any year wilfully shoots or attempts to shoot, or uses any boat for the purpose of shooting, *any wild bird*, or uses any lime, trap, snare, net (*y*), etc., for the purpose of taking any wild bird, or offers for sale, or has in his possession after March 15th any wild bird recently killed or taken, may be summarily convicted. Penalty for *any wild bird included in the schedule*, 1*l*. For *any bird not included* in the schedule, for the first offence the offender shall be *reprimanded* and discharged on payment of costs, and for every subsequent offence *may be fined* 5*s*. for each bird.

"Wild birds" shall, for all purposes of this Act, be deemed to mean all wild birds.

Offenders refusing to give correct name and address may be fined 10*s*. in addition to the penalty.

The Act does not refer to owners or occupiers, or persons authorized by owners, killing or taking wild birds, *not included in the schedule*, on their lands.

Taking young birds from their nests is not an offence against the statute, but offenders might be dealt with for having such birds in possession. Taking eggs of birds is made an offence by the Act of 1894 (*z*).

The Secretary of State has power, on application from the court of quarter sessions, to vary the close time in different districts.

(*x*) In addition to the principal Act, Acts were passed in 1881, 1894 and 1896.

(*y*) Trap, net, snare, etc., may be forfeited if court so order (Act of 1896).

(*z*) The Secretary of State may, on application of county council, by order prohibit the taking or destroying of eggs in any specified area (s. 2). Penalty for each egg, 1*l*. (s. 5).

The birds named in the schedule to the Act are—

American Quail
Auk
Avocet
Bee-eater
Bittern
Bonxil
Colin
Cornish Chough
Coulter Neb
Cuckoo
Curlew
Diver
Dotterel
Dunbird
Dunlin
Eider Duck
Fern Owl
Fulmar
Gannet
Goatsucker
Godwit
Goldfinch
Grebe
Greenshank
Guillemot
Gull (except black-backed gull)
Hoopoe
Kingfisher
Kittiwake
Lapwing
Lark (Act of 1881)
Loon
Mallard
Marrot
Merganser
Murre
Night-hawk
Nightingale
Nightjar
Oriole
Owl
Oxbird
Oyster-catcher
Peewit
Petrel
Phalarope
Plover
Ploverspage
Pockard
Puffin
Purre
Razorbill
Redshank
Reeve or Ruff
Roller
Sanderling
Sandpiper
Scout
Sealark
Seamew
Sea Parrot
Sea Swallow
Shearwater
Shelldrake
Shoveller
Skua
Smew
Snipe
Solan Goose
Spoonbill
Stint
Stone Curlew
Stonehatch
Summer Snipe
Tarrock
Teal
Tern
Thicknee
Tystey
Whaup
Whimbrill
Widgeon
Wild Duck
Willock
Woodcock
Woodpecker.

Larks are to be considered as included in the above Schedule (Act of 1881).

A special Act has been passed protecting "sand grouse" (51 & 52 Vict. c. 55).

It is explained by Act of 1881 that no penalty attaches to the possession of a wild bird lawfully killed or taken outside the place to which the Act extends.

The execution as local authority of the Acts relating to wild birds in a county has been transferred to the county council (Local Government Act, 1888); publicity is to be given by notice and advertisement to orders made (Acts of 1894 and 1896).

57 & 58 Vict. c. 24 was passed to amend the Wild Birds Protection Act, 1880, and came into force on July 20th, 1894. It is to be read as one with that Act.

Under this Act a Secretary of State may, on the representation of a county council (ss. 2 and 3):—

(a) Prohibit by order the taking or destroying during specified times and within specified local areas, of wild birds' eggs either generally or of particular kinds;

(b) Apply the Act of 1880, within specified local areas, to any species of wild birds not included in the schedule of that Act. The effect of this would be to create a close time for wild birds not previously protected.

Sections 4 and 5 of the Act provide for the mode of publication of any order issued under the above sections and prescribe penalties for the breach of such orders.

These Acts have been further amended and extended by the Wild Birds Protection Act, 1896 (59 & 60 Vict. c. 56). Section 1: Secretary of State on application under section 8 of the Act of 1880, shall extend the prohibition of taking or killing particular kinds of wild birds during the whole or any part of that period of the year to which the protection of wild birds under that Act does not extend, or the taking or killing of all wild birds in particular places during the whole or any part of the period. Section 3: Powers exerciseable under Act of 1894 by county council may be exercised by council of county borough. Section 5: On conviction, in addition to penalty, trap, etc., may be forfeited.

Under s. 24 of Ground Game Act, 1880, any person not having the right to kill the game on the land, nor due permission, taking or destroying in the nest any game eggs or eggs of any swan, wild duck, teal, or widgeon, or knowingly having in his possession any eggs so taken:—Penalty 5*s.* per egg.

Births and Deaths.

The Births and Deaths Registration Act, 1874, requires certain relatives and persons named to give information of every birth to the registrar within forty-two days and of every death within five days.

Penalties attach for burial of body of deceased child as if it were stillborn, or for burial of stillborn child except under prescribed conditions, or for burial of two bodies in one coffin. See also Bodies and Burials.

Blasphemy.

The crime of blasphemy is a *Misdemeanor* punishable at common law by fine or imprisonment, or both. The offence of blasphemy, or composing, printing, or publishing blasphemous libels is not triable at quarter sessions (6 & 7 Vict. c. 96).

Under 9 & 10 Will. 3, c. 32, any person educated in the Christian religion who shall by writing or speaking assert or maintain that there are more gods than one, or shall deny the Christian religion to be true, or the Holy Scriptures to be of Divine authority, shall, upon conviction on indictment, be subject to penalties, loss of office, etc. (*a*).

The disputes of learned men upon particular controverted points of religion are not punishable as blasphemy.

Board of Agriculture.

(52 & 53 Vict. c. 30 (1889).)

On the formation in 1889 of a Board of Agriculture, many of the powers of the Privy Council relating to "Contagious Diseases in Animals," "Dogs," etc., were transferred to the board. See titles relating thereto, GENERAL SUBJECTS, *post*.

Brawling.

Disturbing congregations.—Under 1 W. & M. c. 18, s. 15, it is an offence (penalty 20*l*.) to maliciously or contemptuously come into any cathedral, parish church, or other congregation permitted by this Act, and disquiet or disturb the same.

Under 52 Geo. 3, c. 155, s. 12, it is an offence to wilfully, maliciously, or contemptuously, disturb or disquiet any

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(*a*) Notwithstanding this doctrine, it is assumed that no prosecution could be sustained at the present day for calmly discussing or even calling in question the truth of Christianity, and that the offence of blasphemy consists in attacking it by ribaldry, profanity, or indecency, and not by legitimate argument. The case of *Foot and Others* ("Freethinker" publication), tried at the Central Criminal Court, March, 1883, and the case of *R.* v. *Ramsey*, 48 L. T. 733, are illustrative.

meeting (*b*), assembly, or congregation of persons assembled for religious worship permitted by this Act. Penalty, 40*s*.

By 23 & 24 Vict. c. 32, ss. 2 and 3, any person is liable to fine or imprisonment who shall be guilty of riotous, violent, or indecent behaviour in any cathedral or church, or in any chapel of any religious denomination (*c*), or in any place duly certified under 18 & 19 Vict. c. 81, whether during divine service or at any other time, or in any churchyard or burial ground, or who shall molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet, or misuse any preacher duly authorized to preach therein, or any clergyman ministering or celebrating any sacrament or divine service, rite, or office in any cathedral, church, chapel, or burial ground.

The offender may be apprehended by a constable or churchwarden (s. 3). The Burials Law Amendment Act, 1880, provides for decency and order at burials.

Bodies.

See DEAD BODIES, *post*.

Bread Act.

(6 & 7 Will. 4, c. 37.)

Under this Act bakers and sellers of bread are liable to penalties for selling bread otherwise than by weight (*d*)—French or fancy bread (*e*) or rolls excepted—such weight to be avoirdupois weight; they are required to keep proper beams and scales (*f*) with proper weights or other sufficient

(*b*) The provisions of this Act are extended by the Religious Disabilities Act (9 & 10 Vict. c. 59), to all meetings, assemblies, etc., of persons lawfully assembled for religious worship.

(*c*) Any place actually used as the "chapel of any religious denomination," whether certified or not, will be within the protection of the statute (34 J. P. 12).

(*d*) Selling without weighing *at the time* of sale is not made an offence. If a customer asks at a shop for bread by weight, the baker is bound to weigh the loaf, although not necessarily in the presence of the customer, but he is bound to weigh the bread some time or other before selling it, and is responsible if the weight is short. *R.* v. *Kenneth*, L. R. 4 Q. B. 565.

(*e*) "Fancy bread" must be something which to the eye is distinguishable from ordinary household bread (60 J. P. 425).

(*f*) The statute does not authorize a penalty to be conferred *summarily* for not fixing scales.

balance in shop, and are liable if they use incorrect or false balance.

Sale from cart.—Bakers or their servants who carry out or deliver bread in or from any cart or other carriage (*g*) without having with them a correct beam and scales with proper weights or other sufficient balance, or who shall refuse to weigh in the presence of the purchaser any bread purchased or delivered, are liable to a penalty of 5*l*.

Nothing in this section is to render a baker or seller of bread, or servant of such baker, liable for failing to weigh bread in the presence of the purchaser unless he is requested to do so (Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 32).

Bread made with admixture of any sort of grain other than wheat to be marked with a large Roman letter M. Sections 8 and 9 relate to adulteration of bread, meal, corn flour, etc. (*h*).

Warrant to search may be granted under s. 11 of Act.

All proceedings under this Act must be taken within forty-eight hours of offence (exclusive of Sunday), or within such reasonable time as the justice granting the summons may think fit.

NOTE.—*The statute applies to sale of bread out of London and beyond the bills of mortality, and ten miles from the Royal Exchange.*

Breaking Doors.

See Chap. I., p. 7, *ante*.

Bribery.

This offence, which is a misdemeanor at common law, is made a misdemeanor by statute (52 & 53 Vict. c. 69).

Corruption of or by public officer.—Bribery may be defined as the taking by, or giving to, a person in a judicial or public office (such as a police officer) of any fee, gift, reward, etc., to influence his behaviour in his office, or the taking or giving a reward for appointing another to a public position.

(*g*) This section does not apply to the delivery of bread from a basket.

(*h*) In a case tried at Bodmin Spring Quarter Sessions, 1884, a baker was sentenced to one month's imprisonment for selling bread adulterated with alum (28 Sol. J. 451).

An attempt to bribe, although unsuccessful, is also a misdemeanor. Every person is guilty of misdemeanor who commits bribery, or uses undue influence at or in respect of any election to Parliament, or to any municipal office.

Bribery at elections is dealt with under the Corrupt Practices Act, 1883.

Burglary.

For statutory provisions relating to burglary see 24 & 25 Vict. c. 96, s. 51, the Larceny Act, in Appendix, *post*.

Maximum punishment.—Penal servitude for life, or imprisonment not exceeding two years.

The offence may be tried at quarter sessions, but the prisoner charged is to be committed for trial at assizes unless owing to special circumstances (difficulty or absence of gravity) the justices think best to commit to sessions (Burglary Act, 1896).

Definition.—Burglary is "the breaking and entering the dwelling-house of another in the night time (between 9 P.M. and 6 A.M.) with intent to commit some felony within the same, whether such felonious intent be executed or not.

In this definition there are four things to be considered:—

The time, viz., night time (*i*), between 9 P.M. and 6 A.M. See Larceny Act, s. 1, *post*.

The place.—A dwelling-house (*k*), that is a permanent building in which some person habitually sleeps.

The manner.—Both a breaking and entering are necessary. The breaking may be by unlocking the outer door or picking a lock, breaking or taking the glass out of a window, raising a trap door kept down by its own weight, or opening a window by putting up the sash, etc., but entering by an open window, or door, or by a hole in the roof, will not be a breaking, though the breaking an inner door, or unlocking it for the purpose of entering such room, will be sufficient. The least degree of entry is sufficient: the introduction of the hand or any part of the person, *if with intent to commit felony*, or the introduction of any instrument or weapon.

(*i*) Where the breaking and entering, etc., is in the daytime, the offence is housebreaking, not burglary.

Being found at night, armed with dangerous weapons, or with housebreaking implements, with intent to commit felony, is a misdemeanor. Door keys and pincers are implements of housebreaking. *R.* v. *Oldham*, 21 L. J. 134.

(*k*) Regarding breaking, entering, etc., shop, warehouse, buildings with curtilage, etc., see ss. 55 and 56 of Act; also s. 57 as to sacrilege, viz., breaking and entering, etc., any church, chapel, or meeting-house.

if used for the purpose of committing a felony. Obtaining an entry by trick or artifice, or by collusion with a servant or person in the house, is sufficient entry to constitute burglary.

The intent.—The breaking and entering must be with a felonious intent, that is with a design to commit a robbery, murder, rape, or some other felony, whether actually perpetrated or not. Where the breaking is a breaking out of a dwelling-house in the night there must have been a previous entry with intent to commit a felony, or an actual commission of a felony in such dwelling-house. *An entry with intent to commit a misdemeanor or trespass will not be sufficient.*

As to steps to be taken in investigating cases of burglary, see CRIMINAL INVESTIGATION, p. 27.

Burials.

All burials under the Burials Laws Amendment Act of 1880, whether with or without a religious service, shall be conducted in a decent and orderly manner, and any person guilty of riotous or indecent behaviour shall be guilty of a misdemeanor.

Christian burial.—There appears to be no clear authority as to what is meant by "Christian burial." A mother was indicted for burying her child in a garden. BOWEN, J., held there was no evidence to go to the jury (Stafford Winter Assizes, 1879, 24 Sol. J. 245).

Cremation is not illegal unless carried out so as to amount to a public nuisance. See also title DEAD BODIES, *post*.

Byelaws.

The council of any borough may make byelaws for the good rule and government of the borough (Municipal Corporations Act, 1882, s. 23) (*l*).

A county council have under the Local Government Act, 1888, similar powers with regard to counties.

Justices are bound to decide on any objection to the validity of a bye-law. RUSSELL OF KILLOWEN, L.C.J., laid down as a general rule that the courts were bound as far as possible to support bye-laws issued by local authorities unless bye-laws were *ultra vires* or unreasonable. *Walker* v. *Stretton* (1896), 60 J. P. 313. See also *Innes* v. *Newman* (Cambridge), [1894] 2 Q. B. 292; 58 J. P. 543; and *Booth* v. *Howell* (St. Albans), 53 J. P. 678.

(*l*) See also Public Health Act, 1875, s. 187.

Canal Boats.

(40 & 41 Vict. c. 60.)

Local authorities are required to enforce the above Act and the Act of 1884 within their respective districts.

A boat used for conveyance of goods in inland navigation can only be used as a dwelling if it has been registered in accordance with Act (*m*). Inspectors are appointed to carry out the provisions of the Acts, and any person authorized by the registration or sanitary authority, or by a justice of the peace, may enter a boat on suspicion of contravention of Act, or that there is anybody on board suffering from infectious disorder.

A child on board a canal boat and his parents are, for purposes of Elementary Education Acts, to be deemed residents in the place to which the boat is registered as belonging.

Every registered canal boat is to be lettered, marked, and numbered on both sides or on the stern so as to be plainly visible from both sides of canal (40 & 41 Vict. c. 60, s. 3, and 47 & 48 Vict. c. 75, s. 7 (Act of 1884, which amends Act of 1877)).

Cheating.

Cheating is an offence indictable as a *misdemeanour* under the common law, when the method of cheating or deceiving is such as people *by ordinary care* cannot guard against, as when false weights, &c., are used, but it is different when the cheat or deception is one against which common prudence might protect.

Cheating at play.—Any person who shall by any fraud or unlawful device, or ill practice in playing at or with cards, dice, tables, or other games, or in bearing a part in the stakes, wager (*n*), or adventure, or in betting on the sides or hands of them that do play, or in wagering on the event of any game, sport, pastime, or exercise win from any other person to himself, or any other, or others, any sum of money or valuable thing, *shall be deemed guilty of obtaining* such money or valuable thing from such other person *by a false pretence* with intent to cheat or defraud such person of the same (8 & 9 Vict. c. 109, s. 17, Gaming Act, 1845).

(*m*) *R.* v. *Holloway*, 5 C. & P. 524. The boat must be re-registered if alterations be made in structure (Act of 1884).

(*n*) See cases collected at 40 J. P. 227, as to "what is a wager."

Children.

An "Infant" in law is a person under the age of twenty-one. As to inciting infants to borrow money or inciting to bet or wager, see title "Betting Acts," *ante*.

Under the age of seven years an infant cannot be guilty of felony; above seven and under fourteen, if it appears to the court and jury that a child could discern between good and evil, he may be convicted. After fourteen he is accountable. There is an exception in charges of rape, and assault with intent, etc.

Regarding punishment of *children* under twelve years of age charged with indictable offences, and summary punishment of "young persons" between twelve and sixteen years of age, see Summary Jurisdiction Act, 1879, ss. 10 to 20. Appendix, *post*.

See also titles INDUSTRIAL SCHOOLS, REFORMATORIES, EDUCATION ACTS.

As to the sale of intoxicating liquor to children, see title LICENSING LAWS, *post*.

Italian children.—A letter from the Home Office, dated August, 1877, requested co-operation of police in efforts to suppress the traffic in Italian children imported into this country by persons known by the name of *padroni*. The *padroni* send these children into the streets playing instruments, selling images, begging, etc.

In many cases the employer commits an offence against the Vagrant Act, by procuring the child to beg, or the child will come within the Industrial Schools Act, 1866 (s. 14).

Proceedings, however, can now generally be taken under the Prevention of Cruelty to Children Act, 1894.

Deserted children.—Children found by the police should be taken to the union; if found by a private person a description of the child should be taken, and the finder should be directed to the union and informed that he is accountable for its safe delivery there. 52 & 53 Vict. c. 56 gives the guardians of any union power to provide for and deal with deserted children of convicts, prisoners, etc. A child may be received into prison with its mother, provided it is at the breast; an authority from the committing magistrate for the child's admission should accompany the prisoner, but no child can be so received after it is twelve months old (Prison Rules, 1878). Special provision is

made for the children of convicts (up to fourteen years of age). See PREVENTION OF CRIMES ACT, *post*.

Offences against children—As to stealing, abandoning, defilement, etc., see 24 & 25 Vict. c. 100, ss. 27 and 56, also 31 & 32 Vict. c. 122, s. 37; and title WOMEN AND GIRLS, *post*.

Infanticide.—The killing of an infant after birth, see p. 116.

The Infant Life Protection Act, 1897 (60 & 61 Vict. c. 57), repeals the Act of 1872. Any person receiving, for hire or reward, more than one infant under five years to nurse or maintain apart from parents for longer than forty-eight hours, shall forthwith notify the local authority, and further notice is to be given on removal of infant. Notice must also be given where an infant is received for not more than 20*l*. paid down, and in event of death coroner must be at once informed.

Inspectors (male or female) can be appointed under Act (s. 3).

The local authority are to fix number of infants which may be retained in any dwelling.

Section 6 deals with removal to workhouse or other fit place of infant improperly kept. A constable may enforce order.

Relatives, or guardians of infants, are exempted from provisions of Act. "Local Authority" shall mean (elsewhere than in city or county of London) the Board of Guardians.

The Act comes into operation January 1st, 1898.

Children's Dangerous Performances Act, 1879.—This Act (42 & 43 Vict. c. 34) prohibits the employment of children under fourteen years of age (*o*) in dangerous performances, whereby in the opinion of a court of summary jurisdiction the life or limbs of any such child shall be endangered. Persons so employing children are liable to a penalty of 10*l*., as is also the parent or guardian aiding and abetting the same. Section 3 prescribes certain penalties and compensation for accident to any child.

(*o*) By recent Act (60 & 61 Vict. c. 52) the age is extended, in case of males to sixteen, females to eighteen. The consent in writing of chief officer of police is a condition precedent to prosecutions in certain cases. It rests with defendant to prove child is not of age alleged.

Prevention of Cruelty to Children Act, 1894. (57 & 58 Vict c. 41.)

This statute repeals the Act of 1889. It may be divided into two parts: (1) The treatment of children; (2) The employment of children.

(1.) Any person over sixteen years of age having the custody, etc., of any child under the age of sixteen who wilfully assaults, illtreats, neglects, abandons (*p*) or exposes, or causes or procures such child to be assaulted, etc., in a manner likely to cause unnecessary suffering or injury to its health, shall be guilty of a *misdemeanor*. Punishment: Fine from 25*l*. to 100*l*. (with imprisonment); or if pecuniarily interested in death of child, fine of 200*l*. or penal servitude for five years.

(2.) Regarding employment of children. No child being a boy under fourteen or girl under sixteen is to be in any street for the purpose of begging, etc., whether under the pretence of singing, etc., or offering anything for sale or otherwise, and no child under ages above mentioned is to be in any street or licensed premises other than premises licensed for public entertainments, for the purpose of singing, playing, or performing for profit, or offering anything for sale, between the hours of nine at night and six in the morning.

No child under the age of eleven is permitted to do anything for profit in streets, public-houses, circuses, or other places of public amusement.

The section (2) contains a proviso exempting cases where the entertainment, etc., is for the benefit of school or any charitable object, and (in case of licensed premises) a special exemption from justices has been obtained.

No child under sixteen is to be allowed to be in any place for the purpose of being trained as an acrobat, contortionist, or for any other dangerous performance, but this does not apply to a child who is being trained by his parent or other legal guardian (s. 3).

Punishment: Fine 25*l*., with imprisonment. Children over seven may be employed at circuses, etc., on obtaining licence at petty sessions.

(*p*) A child carefully packed and sent by train to its father's abode was "abandoned," although no actual injury resulted. *R.* v. *Folkingham* (34 J. P. 149). See also *R.* v. *White*, 40 L. J. 134, where a father was held guilty who, knowing his child had been left on his doorstep, allowed it to remain for six hours at night.

Notice to police.—Where any person applies for a licence (under s. 3) he shall at least seven days before making the application give notice thereof to the chief officer of police for the district in which the licence is to take effect, who can, if necessary, appear to oppose the grant.

Powers of police.—Under s. 4 of the Act a constable may, without warrant, take into custody (*q*) any person who, *within view of such constable*, commits an offence under the Act when the name or residence of such person are *unknown to the constable* and cannot be ascertained by him. A constable may take to a place of safety (which includes a workhouse) any child begging or receiving alms, etc., or in respect of whom any offence of cruelty or any of the offences named in the schedule to the Act it is believed have been committed.

Under s. 4, police are empowered to release persons on bail, unless such release tend to defeat the ends of justice, or cause injury or danger to the child.

The court can give the custody of the child to any person it may think fit, and can order the parent to contribute to its support (ss. 6 and 7).

Any person can apply for a warrant, which can, if necessary, be executed with force, but the warrant can only be executed by a superintendent, inspector, or other superior officer of police, who shall be accompanied by the person making the information *if such person so desire*, and, if directed, a doctor also, unless the justices otherwise direct (s. 10).

Several provisions are made relating to the evidence of any child, who, if of tender years, sufficiently understands the duty of speaking the truth, need not be examined on oath, but if such child wilfully gives false evidence it shall be liable to be convicted and punished as provided for by s. 11 of Summary Jurisdiction Act for juvenile offenders.

Several children may be included in one proceeding, and then parent is only liable to one penalty.

Schedule of offences includes any offence under ss. 27, 55 or 56, of Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), and any offence against child under sixteen under ss. 43 or 52 of that Act, Appendix, *post*. Any offence under

(*q*) Bail shall be granted to persons so arrested.

Children's Dangerous Performances Act, 1879 (42 & 43 Vict. c. 34), and any other offence involving bodily injury to a child under sixteen.

A National Society for the Prevention of Cruelty to Children has been established, and inspectors appointed in most police districts to enforce provisions of Act.

Custody of Children Act, 1891.—This statute (54 Vict. c. 3) contains provisions enabling the courts to refuse parent in certain cases the custody of a child, or to require as a condition precedent to granting his request that he shall pay to any person who has brought up such child, or to the guardians of any union or parochial board, the whole or part of the costs incurred in bringing up the child.

The Act was passed in consequence of the litigation arising out of cases from Dr. Barnardo's Homes.

Chimney Sweepers Act.

The chief officer of police shall enforce and put in execution the Chimney Sweepers and Chimney Regulation Acts, 1840 and 1864, without prejudice to the right of any other person to institute proceedings thereunder (38 & 39 Vict. c. 70, s. 21 (1875)).

Acts of 1840 and 1864.—These Acts make it criminal for any person to compel or allow any person under the age of twenty-one to ascend or descend a chimney or enter a flue for the purpose of sweeping, cleaning, or coring the same, or for extinguishing fire. Penalty not exceeding 10*l.*, or in lieu imprisonment not exceeding six months. No person under sixteen years of age is to be apprenticed to a chimney sweeper.

Under 3 & 4 Vict. c. 85, s. 6, the construction of chimneys built or re-built after August, 1840, of less size than 14 inches by 9 inches, or, if circular, than 12 inches, subjects to a penalty (*r*).

The Act of 1864 (27 & 28 Vict. c. 37) contains provisions prohibiting chimney sweeper employing any child under ten years of age in his business, except on his own premises. The Act also prohibits a chimney sweeper taking with him

(*r*) As to implied repeal of this section by a later local Act, see *Hill* v. *Hill*, 41 J. P. 183; 45 L. J. 153.

into any house which he may enter for the purpose of sweeping chimneys, or extinguishing fires, etc., any person under sixteen years of age; proof of age lies on the defendant (s. 1).

Chimney Sweepers Act, 1875.—The Act of 1875 (38 & 39 Vict. c. 70) requires that "every person carrying on the business of a chimney sweeper, and who employs (*s*) any journeyman, assistant, or apprentice, shall take out a certificate."

Certificates.—Certificates are issued by the chief officer of police (fee 2*s*. 6*d*.), and continue in force for one year. A register of certificates issued to be kept. Certificates require to be indorsed if used in districts other than the one for which issued. Penalty for not having a certificate, 10*s*.

The chimney sweeper is required to produce his certificate and give his name and address on demand to any person for whom he acts, or to any justice, constable, or peace officer. Penalty, 10*s*.

Anyone who lends, borrows, or alters a certificate is liable to a penalty of 20*s*. Anyone who makes a false representation regarding application for same is liable to a penalty of 40*s*., and the like penalty, with or without imprisonment, for a second offence.

Holders of certificates convicted of offences against Acts of 1840 and 1864 forfeit certificates.

Chimney Sweepers Act, 1894.—Prohibits the knocking at doors, the ringing of bells, etc., or using any noisy instrument to annoyance of inhabitants for purpose of soliciting employment as chimney sweeper. Penalty, 10*s*. for first offence.

Coining.

For statutory provision relating to coining, see the Coinage Act, Appendix, *post*.

Coining, etc.—The making counterfeit gold or silver coin or the colouring, lightening, or impairing same with intent,

(*s*) Persons *not employing* any journeyman, assistant, or apprentice do not require a certificate. A journeyman or assistant to a master is exempted from having a certificate provided he does not employ for chimney sweeping any other person as his paid assistant or apprentice (s. 9).

is felony, as is also the making coin, or possession of instruments intended to be used for same.

The counterfeiting of copper coin is felony, or the making of counterfeit coin of any foreign prince or state.

Defacing coin.—Defacing gold, silver, or copper coin, by stamping thereon any names or words, is a misdemeanor (s. 16).

Uttering.

Uttering.—The offence of uttering is the one with which police most frequently have to deal under the Coinage Act. It is a misdemeanor (s. 9) to knowingly tender or utter counterfeit gold or silver coin (*t*), as is also uttering and having in possession at the same time similar coin(*u*).

The possession of three or more pieces of counterfeit gold or silver coin with intent to utter is a misdemeanor.

A second offence of uttering, after previous conviction, is felony (s. 12).

The uttering, with intent to defraud, any *spurious coin*, viz., foreign coin, medals, pieces of metal, etc., as current coin, such coin, medals, etc., being of less value than the current coin for which it is tendered, is a misdemeanor (s. 13), and under 46 & 47 Vict. c. 45, s. 2, it is a misdemeanor to have in possession, or offering for sale, etc., any medal, cast, coin, etc., resembling in size, figure, and colour, any of the Queen's gold or silver coin, or having on a device resembling any device on any of the Queen's coin.

Power of arrest.—Under s. 31 of the Coinage Act, any person whatsoever may apprehend any person *found committing* (*i.e.*, in the act of committing) any indictable offence against the Act, and deliver him to a constable or peace officer.

Section 27 of Act contains provisions regarding warrants.

Common Lodging-houses.

(38 & 39 Vict. c. 55, s. 76, Public Health Act, 1875.)

Registered common lodging-houses(*x*) are houses registered by the local authority in which persons of the poorer classes (*y*) are received for short periods, inhabiting one

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(*t*) Evidence of subsequent uttering is admissible to prove guilty knowledge. *R.* v. *Foster*, 24 L. J. 134. The fact that counterfeit coins were found in a prisoner's pocket, separately wrapped up, was held to be evidence of guilty knowledge. *R.* v. *Jarvis*, 25 L. J. 30.

(*u*) Or within ten days uttering another such piece (s. 10).

(*x*) A definition of the term "a common lodging-house" is given in the Public Health Act, s. 79.

(*y*) Where beggars and vagrants are received, special rules apply.

common room. The keepers of such houses have to register their names and addresses with the local authority; they may be required to make reports, and have to submit to certain rules regarding cleansing and limewashing the premises (s. 82). The authorized officers of the local authority have free access to any part of the house at any time (s. 85). Cases of fever or infectious disease have to be at once reported.

Under the Prevention of Crimes Act, keepers of lodging-houses are liable to penalties for knowingly harbouring thieves or receiving stolen goods.

Compounding Offences.

If a person takes back goods which have been stolen, or receives other amends on condition that he will not prosecute, he commits a misdemeanor, but the barely taking again one's goods is no offence unless some favour be shown to the thief (*Treat.* 30 J. P. 514).

Any person who enters into an agreement not to prosecute a felony which he knows to have been committed, is guilty of the offence of compounding a felony.

If justices are once seised of the matter all right to compromise so as to oust their jurisdiction is at an end. They may convict on sufficient evidence of the offence notwithstanding any compromise.

Concealment of Birth.

For statutory provisions, see 24 & 25 Vict. c. 100, s. 60, Appendix, *post*.

Maximum punishment.—Two years' imprisonment. Not triable at sessions.

"If any woman shall be delivered of a child every person who shall by any secret disposition of the dead body of the child, whether such child die before, at, or after its birth (*z*), endeavour to conceal the birth thereof shall be guilty of a misdemeanor" (s. 60).

The section contains a proviso enabling a jury, whilst acquitting of murder, to find a verdict for this offence.

(*z*) The birth of a child born alive is to be registered within forty-two days.

The offence is a *misdemeanor*; it is desirable to obtain a warrant before making arrest.

In cases of concealment of birth it is important that the supposed mother should be examined by a doctor if a magistrate so directs, and *that she consents*, but not otherwise.

The examination by a doctor of the person of servant by direction of her mistress (who believed her to be *enceinte*), was held not to be an assault in the absence of evidence of force, violence, or coercion, the servant having at first remonstrated, but ultimately, on being told she must do so, submitted reluctantly to the examination. *Lutter* v. *Bradell and Others*, 50 L. J. Q. B. 166; 45 J. P. 520.

There is no authority to order surgical examination of a woman's person. *Agnew* v. *Jobson*, 42 J. P. 424, 435.

The concealment must be from a desire to keep the world at large in ignorance of the birth, and not from a desire to escape individual anger. *R.* v. *Morris*, 3 Cox, 489.

An endeavour to conceal the birth by leaving the child alive in a field, where it dies from exposure, is not covered by the section which relates to the secret disposition of the dead body of a child. *R.* v. *May*, 31 J. P. 356.

Note.—It appears from a statement made by the Attorney-General in the House of Commons, when speaking on "Criminal Code" (May 14th, 1878), "that if during the course of the birth of any child, the mother or nurse, or any bystander deliberately inflicts any wound or other injury upon the child which is being born, and which prevents its being born alive into the world, although such injury is inflicted with the most evil intention and motive it is possible to conceive, not only has no murder been committed, but no offence whatever punishable under the law by even the mildest sentence."

Conspiracy.

Conspiracy is where two or more persons combine together to execute some unlawful act for the purpose of injuring some third person or the public, and is a *misdemeanor* at common law, punishable by fine or imprisonment, or both. Conspiracy to murder is punishable by penal servitude.

To conspire to accuse any person falsely of any crime, or to do anything to obstruct or defeat the course of justice, is a misdemeanor. See also THREATS, *post*.

In cases of conspiracy the offenders may be tried in any place in which an act was done by any one of the conspirators in furtherance of the common design. Certain conspiracies are triable at sessions. See also titles TRADES UNIONS.

Contagious diseases.—See p. 66.

Convicts.

The provisions relating to convicts on licence and persons subject to police supervision are contained in the Prevention of Crimes Acts, 1871 and 1879. Convicts and supervisees are required to report themselves to the police within forty-eight hours of their arrival in any police district.

They have also to report any change of residence within the district, and give notice if they remove out of the district.

Males are bound to report themselves once a month to the police personally or in writing.

Note.—Especial care should be taken by the police not to subject persons thus situated to annoyance by making their antecedents known.

The Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), reduces the minimum for sentences of penal servitude from five to three years repealing s. 2 of Act of 1864.

Section 2 empowers a constable to take into custody without a warrant any holder of a licence under the Penal Servitude Acts, or any person under police supervision, whom he reasonably suspects of having committed any offence, repealing s. 6 of Act of 1864, which gave a constable somewhat similar powers.

The following are the conditions of licence:

(1.) The holder shall preserve his licence, and produce it when called upon to do so by a magistrate or police officer.

(2.) He shall abstain from any violation of the law.

(3.) He shall not habitually associate with notoriously bad characters, such as reputed thieves and prostitutes.

(4.) He shall not lead an idle and dissolute life without visible means of obtaining an honest livelihood.

Coroners.

The principal statutes relating to the office of coroner are 7 Will. 4 & 1 Vict. c. 68; 6 & 7 Vict. cc. 12 and 83; 7 & 8 Vict. c. 92; 23 & 24 Vict. c. 116; and the Municipal Corporations Act, 1882; also the Coroners Act, 1890 (*a*).

Coroners are elected for life by vote of the freeholders.

Coroners are entitled to receive the assistance of the constabulary at all their inquests and protection in the execution of their office generally.

No person ought to be allowed to make a statement before a coroner except on oath. It is the duty of a coroner to receive evidence on oath alone, but he should caution a

(*a*) The Act deals with the appointment of "deputy."

party who is giving evidence on oath, if he thinks his evidence may tend to criminate him, leaving it to his discretion to go on or not as he pleases.

Prisoners.—Where a prisoner is already in custody committed by a magistrate on a criminal charge, he can only be produced at an inquest as a witness by the authority of the Home Secretary obtained on affidavit.

In a letter from Home Office to the coroner for Middlesex, dated February, 1868, it was intimated that neither Secretary of State nor any other authority has ever had power to order prisoners in custody on any charge to be brought before a coroner while holding an inquisition, except for the purposes of being examined as witnesses.

See also *In re Daniel Cooke*, 9 J. P. 730, decision of COLERIDGE, J., as to power of Court of Queen's Bench to grant a writ of *habeas corpus* to bring before a coroner's jury a prisoner for the purpose of identification in case of "urgent necessity."

Criminal Law Amendment Act.

See WOMEN AND GIRLS, *post*.

Criminal Law Consolidation Acts.

These Acts, passed in 1861, consolidated and amended the criminal law. They are six in number—24 & 25 Vict. cc. 94, 96, 97, 98, 99, 100.

Chapter 94 treats of accessories; chapter 96 of Larceny; chapter 97, Malicious Injury to Property; chapter 98, Forgery; chapter 99, Coinage; chapter 100, Offences against the Person.

An epitome of the Acts is given in Appendix, *post*.

Cruelty to Animals.

The constabulary are empowered to enforce the Acts passed for the more effectual prevention of cruelty to animals.

Powers and duties of police.—A constable upon view or upon the information of any other person who shall declare his name and address to him, may apprehend (*b*) an offender

(*b*) 11 & 12 Vict. c. 92, s. 13, but police should proceed by summons where offender is known.

without a warrant and convey him to a justice. Any constable may take the vehicle or animal which is in the charge of the person apprehended, and deposit the same in safe custody as a security for any penalty, and for the expenses of keeping the same, for which purpose the justice may order a sale.

[Penalty for assault on constable, 5*l.*]

The Injured Animals Act, 1894, confers an important power on police. A constable can order the slaughter of any horse, mule, or ass which he may find so severely injured that it cannot without cruelty be led away. He shall, if the owner is absent or refuses to consent to the destruction of the animal, at once summon a duly registered veterinary surgeon, if any such resides within a reasonable distance; and if it appears by the certificate of such surgeon that the animal is mortally injured, or so severely that it is cruelty to keep it alive, it shall be lawful for the constable, *without the consent* of the owner, to slaughter the animal or cause it to be slaughtered. Expenses can be recovered from the owner.

(12 & 13 Vict. c. 92.)

An offender against the Act is defined (s. 2) as any person who shall cruelly beat, ill-treat, overdrive, abuse, or torture, or cause or procure to be cruelly beaten, etc., any animal. Penalty 5*l.*, or, under certain circumstances, imprisonment (three months).

"Dishorning" of cattle.—In *Ford* v. *Wiley*, the Queen's Bench Division held that infliction of pain for a necessary purpose is not cruelty, but that unnecessary and unreasonable abuse of the animal is, so "dishorning" cattle, by cutting off the horns at the root for greater convenience in transit, etc., adds to the selling value, but it is *unjustifiable and unnecessary*, and is, therefore, a *cruel abuse* of the animal, and is illegal (23 Q. B. D. 203; 53 J. P. 485). [The court in this case differed from the judgment in an earlier case (*Lewis* v. *Fermor*), "spaying" sows.]

The Scotch Courts, in *Todrick* v. *Wilson* (March, 1891), differed from *Ford* v. *Wiley*, holding that the operation of "dishorning" when performed with skill is not an offence under the Act.

The Irish Queen's Bench Division also refused to follow *Ford* v. *Wiley*, but *Ford* v. *Wiley* must still be followed by justices in England. Wanton cruelty to an animal, even if the person intend eventually to kill the animal, cannot be excused.

"Dubbing," or cutting the combs of cocks for exhibition purposes, is ill-treatment and torture, but it was held in their case also that pain inflicted

to make the animal more serviceable for the use of man is not cruelty. *Murphy* v. *Manning*, 41 J. P. 30.

The mere omission to slaughter an animal known to be in great pain and incurable is not within the section (s. 18), but turning such an animal into a field and leaving it to die might be. *Everett* v. *Davies*, 42 J. P. 248.

Shooting a dog trespassing in a garden intending to kill it, but leaving it to die in pain, is not within the Act. *Powell* v. *Knight*, 42 J. P. 597. Guilty knowledge is an essential ingredient of offence.

"Animal" is defined as any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or any other domestic animal.

By 17 & 18 Vict. c. 60 (Cruelty to Animals Act, 1854), s. 3, it is enacted that "domestic animal" shall mean any domestic animal, whether of the kind or species enumerated in clause 29, or of any other kind or species, and whether a quadruped or not.

A fighting cock is a domestic animal within this section, but young parrots newly imported are not domestic animals, nor is a dancing bear a domestic animal. Decoy birds are considered domestic animals. *Cobam* v. *Paget*, 48 J. P. 263.

A pinioned seagull kept for purposes of trade by a photographer was held not to be a domestic animal. *Yates* v. *Higgins*, 60 J. P. 88. A wild animal in a cage is not by mere fact of its confinement a domestic animal. *Harper* v. *Marcks* (1894). A fighting cock is a domestic animal. *Bridge* v. *Parsons*, 32 L. J. 95. Young parrots newly imported are not domestic animals, nor are wild rabbits caught in nets and confined in boxes before being liberated and coursed. *Aplin* v. *Porritt* (1893). 57 J. P. 457.

Conveying animals in vehicles so as to subject them to unnecessary pain is an offence against the Act (s. 12); causing them unnecessary suffering on railway journey is an offence under Diseases of Animals Act, 1894, p. 69, *ante*.

Dogs cannot be used for draught. As to drugging animals, see title POISON, *post*.

Baiting, etc.—Keeping or using any room, etc., for baiting or fighting any bull, bear, badger, dog, cock, or other kind of animal, domestic or wild (*c*), or encouraging or assisting at the fighting or baiting, etc., are offences. Penalty 5*l*. (s. 3).

Impounding of cattle.—Persons impounding animals are bound to provide them with sufficient food and water; and 17 & 18 Vict. c. 60, s. 1, provides for the recovery of costs by poundkeeper and for sale of animal in public market after the expiration of seven clear days from impounding, after *three days'* public printed notice given (s. 5).

(*c*) Coursing rabbits with dogs in an inclosure from which they cannot escape is not baiting.

Slaughter Houses.

(26 Geo. 3, c. 71; 7 & 8 Vict. c. 87; 12 & 13 Vict. c. 92.)

Every person keeping or using any house for slaughtering horses or other cattle not intended for butchers' meat without a licence from the quarter sessions is liable to penalty (5*l.* a day).

Slaughtering horses. — Persons keeping slaughtering houses for slaughtering horses or cattle (not intended for butchers' meat) are required to immediately cut the hair from off the neck of the animal, and within three days kill it, supplying it in the meantime with food and water (12 & 13 Vict. c. 92, s. 8) (*d*). Any person using or employing any horse or cattle brought to be slaughtered is liable to penalties. Slaughterers are required to keep registers and affix name to premises.

Power of police.—Any constable may, at all reasonable times of the day, alone or with an inspector, enter and inspect all premises licensed for slaughtering, and inspect or take an account of any cattle therein.

Vivisection.

The performance of painful experiments on living animals (*e*) for scientific purposes by vivisection or otherwise is restricted by 39 & 40 Vict. c. 77. Penalty 50*l.* for first offence; for second offence, 100*l.*, or three months' imprisonment.

Section 2 of Act permits experiments with anæsthetics on a dog or cat, provided a certificate be obtained; also on a horse, ass, or mule with similar certificate.

Any public exhibition of painful experiment is illegal.

A search warrant may be granted, and persons refusing admission to constable or giving false name, etc., are liable to penalties.

[Prosecution against licensed house cannot be instituted without consent of Secretary of State.]

(*d*) Horses sent to kennels to slaughter (for hounds) come within section. *Colam* v. *Hall*, 40 L. J. 100.

(*e*) The Act does not apply to invertebrate animals (s. 22).

Customs Laws.

The law relating to the customs is consolidated by the Customs Law Consolidation Act, 1876 (39 & 40 Vict. c. 36).

Police are authorized (s. 203 of Act) upon reasonable suspicion to stop and examine any cart, waggon, etc., for the purpose of ascertaining whether any smuggled goods are contained therein.

Smuggled goods.—All goods liable to duty upon which the duties of customs have not been paid, or the importation of which is prohibited or restricted, and which are unshipped or in the course of removal, are liable to forfeiture, together with any goods found packed with or used in concealing them.

Offenders are liable to a penalty of 100*l.*, or treble the value of the goods. They may be arrested without a warrant.

The first-mentioned statute is amended by 42 & 43 Vict. c. 21; 44 Vict. c. 12; 50 Vict. c. 7; and 53 & 54 Vict. c. 56.

Dead Bodies.

(48 Geo. 3, c. 75; 49 Vict. c. 20.)

48 Geo. 3, c. 75, contains provisions regarding the interment of dead bodies cast ashore by the sea, which must be buried by the parish. By 49 Vict. c. 20 the Act is extended and made applicable to the discovery and interment of dead human bodies cast on shore, or found in any tidal or navigable waters. Information of the finding of such body must be given to a police constable within the time specified in the Act of Geo. 3, and such constable is required forthwith to communicate the same to the parish officer therein mentioned.

A dead body is not capable of being stolen; but it is a misdemeanor at common law to remove a corpse from a grave without lawful authority. It is also a misdemeanor, without lawful authority, to dispose of a dead body for the purpose of dissection, and for gain or profit.

It is not the duty of the police to remove a dead body from any house where it may be lying. Persons applying to the police with such an object should be referred to the parochial authorities; but it would be incumbent on the police to interfere in cases where the exposure of the body would offend public decency.

The Births and Deaths Registration Act of 1874 requires certain relatives and persons named to give information of every death to registrar within five days. As to burial of still-born child, see BIRTHS AND DEATHS, p. 101.

Regarding inquests, see title INQUESTS, *post*.

Debtors Act.

The Debtors Act, 1869, is referred to under head of BANKRUPTS, *ante*, p. 85. The proceedings relative to debtors and bankrupts—fraudulent bankrupts excepted—are entirely of a civil character. Imprisonment for debt is abolished, but a power of commitment for contempt, on disobedience of an order of court for payment of debt, exists. In such cases defaulters can be arrested on warrant by county court bailiff, and police assistance is sometimes sought to prevent a breach of the peace, but the intervention of the constabulary in such cases is seldom, if ever, required.

Deserters.

Under s. 154 of the Army Act, 1881 (*f*), it is lawful for any constable to apprehend and bring before a court of summary jurisdiction any person whom he may reasonably suspect to be a deserter. A constable should, however, before apprehending a man as a deserter, ascertain whether notice of the desertion appears in the *Police Gazette*, or he should hold a written authority from the colonel or adjutant of the regiment to which the man belongs authorizing his arrest. Communications received from non-commissioned officers regarding men supposed to be deserters should not be acted upon by constables or sergeants without the authority of a superior officer.

Rewards are given for the apprehension of deserters. Application, on forms signed by justices, should be made to the War Office *at the time the deserter is committed*. Orders will be given by the War Department for the repayment of the necessary expenses incurred in the apprehension and conveyance of the deserter. A detailed statement of expenses, certified by the committing

(*f*) See title ARMY ACT, *ante*.

magistrate, must in all cases be forwarded, the statement to specify the person to whom the expenses are repayable.

Rewards to Police.

The following Circular has been issued by the Home Office directing that rewards should be given to the police for the apprehension of deserters :—

Home Office, Whitehall,
7th December, 1891.

Sir,—I am directed by the Secretary of State to request that you will inform the magistrates of your Bench that *by the provisions of the Police Act*, 1890, the doubts which formerly existed as to whether police constables were entitled to receive for their own use the rewards given by the War Office for the apprehension of deserters have been removed. By section 34 of that Act, the word "fee" is so defined as to exclude "rewards paid to an individual constable by direction of any military authority," and these rewards do not therefore come within the provisions of the Act under which fees received by constables for acts done in the execution of their duty are payable to the Police Fund (section 23, sub-section 2) or to the Pension Fund (section 16, sub-section 2 (i.)).

In the descriptive return which magistrates are required to send to the Secretary of State for War when they order any person to be delivered over to military custody as a deserter, and the form of which is prescribed in Schedule IV. of the Army Act, 1881, the magistrate is required to state his recommendation as to the person to whom the reward for apprehension should be given and as to the amount of the reward.

In future, therefore, in all cases where the magistrate considers that the police officer who effected the apprehension is the person deserving of the reward, his name should be recommended to the War Office in the return.

As regards *the amount of the reward*, the recommendation should be based on the degree of trouble taken and intelligence shown in the apprehension of a deserter ; and the subjoined scale has been suggested by the Secretary of State for War for the assistance of magistrates.

1. When soldiers are apprehended in uniform, near their quarters, it is considered that, as a general rule, 5*s*. is sufficient reward. Not more than 10*s*. will be allowed in any case where the soldiers are in uniform.
2. If they have been taken into custody at a distance, and after being absent from their regiments for any length of time, the reward may be increased to 10*s*. or 15*s*., according to the nature of the cases, and the trouble incurred in apprehension.
3. The reward of 20*s*. should be reserved for cases where superior intelligence had been displayed in apprehending men in plain clothes and under difficult circumstances.

I am, Sir,
Your obedient servant,
Godfrey Lushington.

Militia absentees.—Where an absentee or deserter from the militia has been arrested by the constabulary, notice

should be sent to the adjutant of the regiment of the time and place at which the man is to be brought before the magistrates for trial.

Aiding Deserter.—Under s. 153 persons are liable to be imprisoned for any period not exceeding six months for aiding or assisting deserters, or for persuading any soldier to desert.

Warrant.—The Army (Annual) Act, 1884 (s. 6), enables any justice to issue a warrant for the apprehension of a deserter who is or is supposed to be within his jurisdiction if satisfied of that fact upon oath.

Pretending to be a Deserter.

Any person who falsely represents himself to any military or civil authority to be a deserter from Her Majesty's regular forces shall on summary conviction be sentenced to imprisonment not exceeding three months (s. 152 of Army Act, 1881).

Disorderly Houses.

(25 Geo. 2, c. 36.)

Any person keeping a bawdy house, gaming, or other disorderly house, is liable to prosecution under 25 Geo. 2, c. 36. A person acting as master or mistress of the house will be deemed the owner (*g*), and liable to prosecution, although not, in fact, the real keeper thereof (s. 8).

The offence is a misdemeanor, punishable by fine or imprisonment, or both (3 Geo. 4, c. 114).

In order to encourage prosecutions against persons keeping a disorderly house, s. 5 (25 Geo. 2, c. 36), enacts that, if any two inhabitants of any parish or place (being ratepayers) give notice in writing to a constable of any person keeping any such house, the constable shall forthwith go with such inhabitants to a justice of the peace, and on their making oath before such justice that they do believe the contents of such notice to be true, and on entering into a recognizance to give or produce material evidence, the constable must enter into a recognizance to prosecute. In case of conviction the two inhabitants are entitled to a reward of 10*l.* each if the constable

(*g*) The owner of a house letting it out in apartments to women who use the house for immoral purposes cannot be indicted for keeping a disorderly house. *R.* v. *Stannard*, 33 L. J. 61; and *R.* v. *Barrett*, 32 L. J. 36.

prosecutes; and a constable neglecting his duty in this respect is liable under s. 7 of the Act to forfeit 20*l.* to each of such inhabitants. By s. 6 it is enacted that when such recognizance to prosecute is entered into the justice may issue a warrant to apprehend the accused person, and shall bind him over to answer the charge at the sessions or assizes, and to be of good behaviour in the meantime.

The Criminal Law Amendment Act, 1885, makes the procedure under these statutes applicable to summary proceedings under that Act against brothel keepers for the suppression of brothels (48 & 49 Vict. c. 69, s. 13).

A common bawdy house is a house or room or set of rooms in any house kept for the purposes of prostitution. A married woman may be guilty of this offence as if she were single. Keeping a bawdy house is a nuisance at common law (Russell on Crimes, vol. i., p. 443).

The suppression of brothels is specially dealt with by the Criminal Law Amendment Act, 1885. See title WOMEN AND GIRLS, *post*.

As to harbouring prostitutes, etc., on premises, see under titles LICENSING ACTS, PREVENTION OF CRIMES ACTS, TOWNS POLICE CLAUSES ACT, *post*.

Distress Warrants.

Police are bound to assist duly authorized officers of the law in the execution of warrants of distress, but such assistance should be limited to the prevention only of a breach of the peace.

Regarding the execution of distress warrants addressed to the police, see WARRANTS, *post*.

Distraint for rent.—By 11 Geo. 2, c. 19, where goods are fraudulently or clandestinely conveyed or carried away from premises to prevent the landlord (*h*) from distraining for any rent then due, they may be seized by the landlord, wherever found within thirty days (*i*).

(*h*) The landlord must, however, have a right of distress at common law or under 8 Anne, c. 14, s. 67, and the tenant must be in actual possession.

(*i*) Provided the goods have not been sold *bonâ fide* before such seizure to some person not privy to the fraud. *Riddler* v. *Bowater*, New M. C. 6; 17 J. P. 792.

A court of summary jurisdiction on complaint that goods or chattels exempt from distress for rent have been so taken may by order direct that

Breaking doors.—If the goods so carried away be in any house they may be seized, and in case of a dwelling-house, on oath made before justice in accordance with s. 7 of the Act, the landlord may call to his aid the constable and break open the door without any warrant.

A tenant fraudulently, etc., carrying away goods, or any person knowingly aiding in the removal or concealment of goods to prevent the landlord from distraining for rent then due, is liable to forfeit double the value of the goods (s. 4).

Lodgers Protection Act.—Two justices or a stipendiary magistrate may in certain cases order the restoration of the goods of a lodger seized for rent by a superior landlord (34 & 35 Vict. c. 79).

Dogs.

Stealing dogs.—Dog stealing is not felony at common law, and no indictment will lie for obtaining a dog by false pretences, but under 24 & 25 Vict. c. 96, s. 18 (Larceny Act), dog stealing is punishable on conviction before two justices, by imprisonment for six months, or a fine of 20*l.* above the value of the dog; and a second offence is an indictable misdemeanor. See also ss. 19 and 20 of same Act, Appendix, *post.*

Injury by dogs.—The owner of any dog is liable for any damage done by the dog to cattle, horses, or sheep, even although he was not negligent and was ignorant of the dog's propensities. Damages under 5*l.* are recoverable as a civil debt at petty sessions (28 & 29 Vict. c. 60, s. 1).

By s. 2, the occupier of any room, lodging, or house in which a dog is permitted to live, is presumed to be the owner of the dog unless he can prove the contrary.

Injuries to dogs.—A man may maintain an action for damages for injuries done to his dog without lawful qualification or excuse, and under 24 & 25 Vict. c. 97, s. 41 (Malicious Injuries), the killing (*k*) or wounding of any dog

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same, if not sold, be restored, or if sold, value to be paid to complainant by person levying distress.

An uncertificated bailiff levying distress liable on summary conviction to a fine of 10*l.* (Law of Distress Amendment Act, 1895).

(*k*) The killing of a dog by poisoned meat placed in a garden, after notice to the owner of the dog, is not an unlawful and malicious killing. *Daniel* v. *Jones*, 41 J. P. 712.

is punishable on summary conviction. See Appendix, *post.* Under 27 & 28 Vict. c. 115, poisoned meat may be placed in drains, etc., if protected from dog. See title Poisons, *post.* As to legality of setting dog spears, see 24 & 25 Vict. c. 100, s. 31. A mere notice that dogs found trespassing on land will be shot will not justify the owner of land shooting such dogs, unless it can be shown that it was in defence of property, and that the dog was in the very act of doing mischief. The same principle obtains with regard to shooting a dog in defence of the person.

The principle which underlies the liability of an owner for injuries done to human beings by dogs is as follows:—In the first place, the law takes notice that a dog is not an animal of a fierce nature, but rather the contrary; consequently, when without any actual negligence in the keeping of a dog, the dog bites a person, the dog's master is not liable in damages, unless it can be shown that the dog was, in fact, of a fierce nature, "accustomed to bite mankind," to the knowledge of his master. "A man has a right to keep a fierce dog for the protection of his property, but he has no right to put the dog in such a situation in the way of access to his house that a person innocently coming for a lawful purpose may be injured by it." Judgment of Lord Tenterden, C.J., in *Curtis* v. *Mills*, 5 C. & P. 487. In *Morris* v. *Nugent*, 5 C. & P. 572, Lord Denman, C.J., said that the circumstance of a dog being of a ferocious disposition and being at large is not sufficient to justify shooting him; to justify such a course the animal must be actually attacking the party at the time.

In a case decided at the Guildhall, November, 1891 (*Thurgood* v. *Drew*), Wright, J., directed the jury to take into consideration the breed of the dogs (which were mastiffs) as a ground of *scientia*. The plaintiff was awarded damages 15*l.*

In the case of *Parsons* v. *King*, in the Divisional Court (November, 1891), Coleridge, C.J., held it was impossible to say there was no *scientia* in the case of the dog having bitten the plaintiff twice within an hour.

Savage Dog.—By 34 & 35 Vict. c. 56, any police officer may take possession of any dog that he has reason to suppose is savage or dangerous, which is straying on any highway or place of public resort and not under any person's control, and may detain it until the owner claims it and pays the expenses of its detention; where the owner is known a letter must be sent to him. After three clear days, if the owner is not known, and five clear days if he is known, the chief officer of police may cause the dog to be sold or destroyed if it has not been claimed and the expenses paid. The sale money must be paid to the local rate, from which the expenses of properly feeding the dog during detention must be obtained.

On complaint of a dog being dangerous or not under proper control, a court of summary jurisdiction may, if they

think fit, order the owner to keep it under control or destroy it under a penalty of 20*s*. a day.

Under the Towns Police Clauses Act, 1847, s. 28, any person who, in any street, to the annoyance or danger of the residents or passengers, suffers to be at large any unmuzzled ferocious dog, or any rabid dog, after public notice given directing dogs to be confined on suspicion of canine madness, renders himself liable to a penalty of 40*s*.

Mad dog, etc.—A local authority, the town council of a borough, the local board, or the justices in petty sessions, may, if a mad dog or suspected dog is found within their jurisdiction, make and vary orders placing any restrictions they think fit on dogs not under personal control (*l*) throughout the whole or any part of their jurisdiction, with a penalty of 20*s*. for infraction. Due notice of the order must be published at the expense of the local rate, and is a condition precedent to any conviction (Dogs Act, 1871).

Muzzling.—The Board of Agriculture are empowered to make orders for the muzzling and control of dogs, and for the seizure, detention, and disposal of stray dogs, unmuzzled dogs, and dogs not under control (*m*).

The Order known as the Rabies Order, 1895 (No. 5293) is revoked by the Rabies Order, 1897 (No. 5578); local authorities are required to enforce provisions of Order. Under the Local Government Act, 1888, the county council is the local authority for the purpose of the Contagious Diseases (Animals) Act, under which they may appoint an executive committee, which is to have the power of the local authority.

The provisions of the Diseases of Animals Act, 1894, to apply, and dogs to be included within definition of "animals."

Cruelty to dogs.—Cruelty to dogs is punishable by statute (12 & 13 Vict. c. 92) (*n*).

(*l*) The question whether a dog is under control or not is one of fact for the justices. *Wren* v. *Pocock*, 40 J. P. 646.

(*m*) The "muzzling order" of London County Council (March, 1896) resulted in the seizure of 10,000 dogs in the Metropolis.

(*n*) Setting dogs to fight, if they injure each other, comes within the statute (*Budge* v. *Parsons*, 27 J. P. 231); as also would the cutting of dogs, ears and tails for show purposes (*Murphy* v. *Manning*, 41 J. P. 130); leaving a diseased or injured dog to die in agony is not an offence. *Everitt* v. *Davies*, 42 J. P. 597.

No dog can be used to draw any cart, carriage, truck, or barrow on the public highway under a penalty of 40*s.* for a first offence, and 5*l.* for subsequent offences (17 & 18 Vict. c. 60, s. 2).

Dogs, as well as horses and asses, are protected against vivisection, except under special conditions. See CRUELTY TO ANIMALS, *ante*.

DOG LICENCES.

By 30 & 31 Vict. c. 5, and 41 Vict. c. 15, no person may keep a dog above six months old without a licence under a penalty of 5*l.*, and constables are authorized to request the production of the licence, and to take proceedings under the Summary Jurisdiction Acts against persons refusing to produce or not having licences. Half the penalty recovered goes to the superannuation fund of force to which the constable belongs.

Licences expire 31st of December, and must be renewed following January. The excise seldom prosecutes till the month of January has elapsed.

Exemptions.—Hounds under the age of twelve months, dogs kept by blind persons, and shepherd dogs, if the owner makes a declaration stating the number kept.

Dogs with carriers.—By 4 Geo. 4, c. 95, s. 76, carriers are bound to fasten to their carts or carriages, while on the turnpike road, any dog that may be attending them on such road.

Drunkenness.

Under s. 12 of the Licensing Act 1872, persons "found drunk" on any highway or public place, whether a building or not, or on any licensed premises, shall be liable to penalties for drunkenness.

The section gives a constable no power *to arrest* for *simple drunkenness* (*o*); the procedure should be by summons. But where a person is *drunk and incapable* a constable can detain (*p*) such person until he can proceed with safety to himself.

(*o*) It is no part of the duty of a constable to remonstrate with or censure a person whom he may find drunk.

(*p*) If so detained the offender should be summoned in due course for the offence.

The cases in which a constable can apprehend resolve themselves into

(1) Drunk and disorderly;

(2) Drunk in charge of carriage, etc.;

(3) Drunk in possession of loaded firearms.

See s. 12 of Licensing Act, 1872, Appendix, *post*.

"Every person who, in any highway, or public place, whether a building or not, *is guilty while drunk of riotous* (*q*) *or disorderly behaviour*, or who is *drunk whilst in charge of a carriage*, horses, cattle, or steam engine, on any highway or public place; or *drunk whilst in possession of loaded firearms*, may be *apprehended* (s. 12).

As to offences by drunken persons in towns, etc., see title Towns Police Clauses Act, *post*.

Regarding persons drunk on railway premises and railway servants found drunk, see title Railways, *post*.

As to soldiers, see title Army Act, *ante*, p. 76.

As to permitting drunkenness on licensed premises, see s. 13 of the Licensing Act, 1872; as to exclusion of drunkards from such premises see s. 18.

The practice as to apprehension and detention of persons found drunk varies much. The Home Secretary has advised the police not to apprehend when the drunken person is not incapable, but to apprehend a drunken person who is incapable and detain him until he is brought before a justice, care being taken that there is no delay. As to bail by police officers, see Summary Jurisdiction Act, 1879, Appendix, *post*, also p. 20.

Habitual Drunkards.

The Habitual Drunkards Act, 1879, provided for the establishment of "Retreats," where habitual drunkards might retire with a view to self-cure, forfeiting to a certain extent their liberty.

The Act was to remain in force for ten years.

The Inebriates Act, 1888 (51 & 52 Vict. c. 19), re-enacts the statute of 1879, which is made permanent under the above title. Applications for admission to retreats can be attested by any two justices.

The two statutes are cited as—

The Inebriates Acts, 1879 and 1888.

The Act of 1879 authorizes justices to license "retreats,"

(*q*) The word "riotous" means noisy, turbulent, or uproarious conduct, disturbing the quiet and good order of the place, and is not used in the same sense as in an indictment for a riot.

to which habitual drunkards may be admitted on their own application, and unless discharged by licence are not to be entitled to leave until the expiration of the time mentioned in the application, but such term is not to exceed twelve months. "Habitual drunkard" means "a person who not being amenable to any jurisdiction in lunacy is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquors, at times dangerous to himself or herself or to others, or incapable of managing himself or herself, or his or her affairs."

Persons are liable to penalties for offences against the Acts. Retreats are to be inspected twice a year by inspectors appointed by the Secretary of State (42 & 43 Vict. c. 19).

Under s. 11 of Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), any person convicted of any offence against children named in the Act who is an habitual drunkard and is the parent or is living with the parent of the child may be ordered to be detained in a retreat willing to receive him, with consent of such person, any objection of wife, or husband, being considered.

Education Acts.

The Elementary Education Acts, 1870, 1873, and 1876, contain provisions prohibiting the employment of children under the age of ten years, or children of that age upwards, who have not obtained a certificate of school proficiency, etc. Section 23 of Factory Act (41 Vict. c. 16) provides for education of children employed in factory. Provision is made for the instruction of children above the age of five years, whose education is habitually and without reasonable excuse (*r*) neglected by parents, or who are found habitually wandering, and in company of rogues and vagabonds (39 & 40 Vict. c. 79, s. 11). Such children may be ordered by court of summary jurisdiction to attend a school. Penalty for disobedience of order, 5*s*.

The Acts are enforced by officers specially appointed.

(*r*) "Reasonable excuse": That there is not within two miles of residence any school which the child could attend, or that the absence of child from school has been caused by sickness, or any unavoidable cause (s. 11).

Elections.

Offences at parliamentary and municipal elections are treated of under the Ballot Act, 1872 (35 & 36 Vict. c. 33), and the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51).

Under 35 & 36 Vict. c. 33, s. 9, the presiding officer at any polling booth or polling station can *order into custody* any person who misconducts himself in the polling station.

Duties of Police —The police are usually employed to keep order at the polling station and entrances to the same. They should render to the sheriff and sub-sheriff what assistance they can, but on no account must they interfere with the arrangements for voting or the actions of persons recording their votes. Where the police are employed as assistants in charge of the ballot boxes they should avoid being left at any time in *sole charge* of the boxes.

Police should not attend or take part in any political or public meeting, except in the discharge of their lawful duty, nor are they directly or indirectly to attempt to influence the vote of any elector. See 2 & 3 Vict. c. 93, s. 9, and 22 & 23 Vict. c. 32. As to rioting at elections, see title Riot, *post*.

Police voting.—The Police Disabilities Removal Act, 1887 (50 Vict. c. 9), removes the disabilities (*s*) of police as to voting at parliamentary elections, and by a later Act, constables can vote at municipal, school board, and other elections. Both Acts are given *in extenso* in Appendix, *post*.

Police are forbidden to "canvass" voters (Act of 1893).

Seven days notice must be given to the chief constable should police "sent on duty" require a "voting certificate," under s. 2 of Act of 1887.

Embezzlement.

Embezzlement is a species of larceny, and is treated of under the Larceny Act (24 & 25 Vict. c. 96), Appendix, *post*.

Section 68 of Act deals with embezzlement by clerk or servant (*t*); s. 70 with embezzlement by public officer.

(*s*) Disabilities existed under the Police Act, 1839 (2 & 3 Vict. c. 93, s. 9).

(*t*) Under the repealed statute the offence could only be committed where the money was received by clerk "*by virtue of such employment.*"

The offence consists in the appropriation to his own use by a clerk, or servant, or person employed for the purpose or in the capacity of a clerk or servant, of goods or money entrusted to him for his master.

In order to establish the offence of embezzlement the clerk or servant must have received the money or property from a *third* person on account of his master. Where he receives it direct from his master the offence would be larceny.

It is a question of fact for the jury whether the prisoner is or is not a clerk or servant. *R.* v. *Negus*, 37 J. P. 469. An *agent* is not indictable under the statute. Bramwell, L.J., in *R.* v. *Walker*, thus distinguished between principal and agent, and master and servant. "A principal has the right to direct what the agent has to do, but a master has not only that right, but also to say how it is to be done."

Any three distinct acts of embezzlement committed against the same person, within the space of six months, may be charged in the indictment, and where upon the trial it appears that the offence *amounts in law to larceny*, the jury may return a verdict accordingly. The offence may be dealt with under the Summary Jurisdiction Act, 1879, ss. 11 and 12. See Appendix, *post*.

Embezzlement by co-partners is treated of under 31 & 32 Vict. c. 116, s. 1, and falsification of accounts under 38 & 39 Vict. c. 24, s. 1. Various Acts apply to embezzlement of materials entrusted or given out to be worked up in particular manufactures by workmen and others (17 Geo. 3, c. 56; 6 & 7 Vict. c. 40 (hosiery); 28 Geo. 3, c. 35 (framework knitters).

Employers and Workmen Act, 1875.

The Act (38 & 39 Vict. c. 90) gives justices jurisdiction in disputes to limit of 10*l*. (s. 12).

The expression "workman" under Employers and Workmen Act, 1875, does not include a domestic or menial servant or any workman not engaged in manual labour.

By the Conspiracy and Protection of Property Act, 1876, 38 & 39 Vict. c. 86, various penalties are imposed on (1) persons wilfully and maliciously breaking contracts of *service* or *hiring*, the probable consequences of doing so

being to endanger life or property; (2) masters wilfully neglecting, etc., to provide necessary food, clothing, lodging, etc., to a service or apprentice where legally bound to do so, whereby health of servant or apprentice may suffer; (3) persons intimidating, following, hiding tools, watching and besetting others with a view to compel them to abstain from doing or to do some act which they have a legal right to do or abstain from doing; (4) against illegal trades combination and conspiracies.

Embezzlement of materials by workmen. — Under 17 Geo. 3, c. 56, and 6 & 7 Vict. c. 40, workmen and others are liable to penalties for embezzling, etc., or buying or receiving materials entrusted or given out to be worked up in various manufactures—woollen, linen, fustian, cotton, iron, leather, fur, hemp, hat flax, mohair, silk, etc. 6 & 7 Vict. c. 40, ss. 2, 3, relates to the embezzlement of materials in hosiery manufactory. 28 Geo. 3, c. 55, applies to framework knitters who rent or take to hire a stocking frame, and refuse to re-deliver up the same.

Payment of wages in public-houses.—46 & 47 Vict. c. 31, also 50 & 51 Vict. c. 46, prohibits the payment of wages in public-houses.

The Truck Act (1 & 2 Will. 4, c. 37).—This Act was passed to ensure artificers, etc., receiving their wages in full in the current coin of the realm, and any arrangement made by an employer regarding the supply of goods in lieu of wages, or expenditure of wages in purchases, etc., from any particular person or at any particular place, or charging interest or poundage on advances, is illegal. The Truck Act is greatly extended by the Truck Amendment Act, 1887 (50 & 51 Vict. c. 46), and the Truck Act, 1896.

Explosives Act, 1875.

(38 & 39 Vict. c. 17.)

The Explosives Act relates to the manufacture, storing, carrying, and importing of gunpowder and other explosives. The Act is one of the most voluminous and technical in the Statute book, and the duties connected therewith are usually discharged by inspectors specially appointed by the

local authority, and not by police officers. Where such is the case the police are seldom required to intervene except under the general power of search contained in s. 73 of Act.

A government inspector, or any constable, or any officer of the local authority, if such constable or officer is specially authorized either (1) by a warrant of a justice (which may be granted upon reasonable ground being assigned on oath), or (2) if the case is one of emergency, and delay in obtaining a warrant would be likely to endanger life, by a written order from a superintendent or other officer of police of equal or superior rank, or from a government inspector, upon reasonable cause for believing that any offence has been or is being committed with respect to an explosive, in any place (whether a building or not, or a carriage, boat, or ship), may on producing, if demanded, his authority, enter at any time, and if needs be by force, as well on Sunday as on other days, and examine the same and search for explosives therein and take samples of any explosive and ingredients of an explosive. *Penalty* for failing to admit, or in any way obstructing the officer, not exceeding 50*l.* and forfeiture of explosives and ingredients (s. 73).

Obstructing local authority or Officer.—Any occupier of a store or registered premises, or a small firework factory, refusing to show authorized officer of local authority every or any place, and all or any of the receptacles in which any explosive or ingredient of any explosive, or any substance the keeping of which is restricted or regulated by this Act, that is in his possession is kept, and to give him samples of such explosive ingredient or substance, or of any substance which the officer believes to be an explosive or such ingredient or substance, or to give him such assistance as he may require for the purpose of this section, or who wilfully obstructs the local authority, or any officer of the local authority, in the execution of this Act, is liable to penalty not exceeding 20*l.* (s. 69).

Apprehension.—Any person who commits an offence against this Act, tending to cause explosion or fire in or near any factory, railway, canal, magazine, boat, wharf, carriage, etc., may be apprehended without warrant by a constable, or occupier, or his agent (s. 78).

Reports are to be made to Secretary of State of any accident causing injury or loss of life on registered premises, ship, carriage, etc. Penalty for failure, 20*l.* (s. 62).

The term "explosive" means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting-powders, fulminate of mercury or other metals, coloured fires, and every other substance used or manufactured to produce a practical effect by explosion or a pyrotechnic effect, and includes fog-signals, fire-works, fuzes, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined. The definition is extended by Order in Council No. 1, August, 1875 (*u*).

Gunpowder.—Manufacture is not to be carried on except at factory lawfully existing, or licensed under the Act—Penalty, 100*l.* a day. Persons re-making or repairing explosives are deemed manufacturers. Gunpowder, except for private use, can only be kept in factory in licensed magazine or store in registered premises. The prohibition as to keeping gunpowder in unauthorized place does not extend to a person keeping for his private use and not for sale gunpowder not exceeding thirty pounds, and this provision applies to every other description of explosive, subject to provisions in Part II. of Act (s. 39). The Act contains special provisions as to the conveyance of gunpowder by carrier.

Licences.—The Act provides for grant of new licences by Secretary of State or local authority (*x*) (ss. 6 to 8). Store (*y*) licences may be granted by local authority for keeping not exceeding two tons (s. 15), such licences to be renewable annually (s. 18). Section 17 of Act contains general rules to be observed in stores, and s. 33 rules as to packing and conveyance of gunpowder.

In the case of retail dealers the premises must be registered annually with local authority for the keeping of gunpowder; fee, 1*s.* The gunpowder is to be kept in a house or building or in a fire proof safe; the amount of gunpowder, if kept in detached building constructed for the purpose, not to exceed 200 pounds if kept inside a dwelling-house, 50 pounds unless kept in a fireproof safe; when 100 pounds may be kept (*z*). Neither building nor safe used

(*u*) The order divides explosives into seven classes and minutely defines the substances falling under each of these heads.

(*x*) "Local authority" is defined in s. 67 of Act.

(*y*) Where the county council is the local authority, they may delegate to a committee or to justices in petty sessions the powers conferred.

(*z*) The amount which may be kept varies accordingly to class and mode of storage. As to amounts, see Order in Council, No. 16.

for keeping gunpowder is to have any exposed iron or steel in interior thereof. Articles of explosible or inflammable nature are not to be kept with gunpowder, and all gunpowder exceeding one pound in amount is to be kept in a substantial case, bag, or canister (s. 22).

Modifications.—Subject to provisions contained in Part II. of Act similar provisions as those relating to gunpowder are to apply to every other explosive (s. 39). The modifications relating to safety cartridges for private use are important.

Private use.—By order, April 21st, 1883 (*London Gazette*), the prohibition in Part I. of Act as to keeping gunpowder in an unauthorized place does not extend to a person keeping for his private use and not for sale gunpowder not exceeding thirty pounds, and that subject to provisions in Part II. (s. 39) the provisions as to gunpowder apply to every other description of explosive. Where such explosive consists of safety cartridges an amount containing not more than five times the maximum amount of gunpowder above mentioned may be kept. There shall not be kept for private use any explosive which is not an authorized explosive or which is an explosive of the fulminate class. Regarding fireworks where such are obtained for immediate use no restriction exists as to the amount if kept for a period not exceeding fourteen days in a safe and suitable place.

Exceptions are made as to explosives required for any industrial, agricultural, sporting or other special purpose, which may be kept under a certificate granted by the chief officer of police of the district.

A further order was made in council, September 24th, 1886, to the effect that a certificate shall not be required to authorize the keeping for private use of Schultz gunpowder, E. C. sporting powder, E. C. rifle powder, or other nitro-compound adapted and intended exclusively for the use of cartridges for small arms.

Percussion caps, safety fuses for blasting, and fog-signals by railway company for use on railway of such company may be kept without licence or registration (s. 50).

Packing and Conveying of Gunpowder.

Gunpowder, if under five pounds, must be packed in a substantially closed case (s. 33).

If over five pounds, the package must be as described in s. 33.

Packages must be used for no other purpose, and no iron or steel may be exposed, internally or externally.

No more than 100 pounds in any one package, except with Government inspector's consent and under conditions approved by him.

The outside case must be marked conspicuously "Gunpowder"; in the case of percussion caps and of safety fuze for blasting, the words "Percussion Caps or Safety Fuze for blasting," with the name and address of the owner or sender; or if other explosive, "Explosive," and the name and class to which it belongs, and the name and address of the owner or sender. (See Order of Secretary of State, No. 3, as to this.) Penalty, 20*l.*, and forfeiture.

As to bye-laws of railways, etc., regulating conveyance of gunpowder (ss. 34, 35, 36),

As to bye-laws regarding conveyance of explosives on road, etc. (Order of Secretary of State, No. 4).

No explosive above five pounds to be conveyed with passengers. The conveyance of certain explosives is prohibited.

Extra precautions must be taken, when the means of carriage do not afford sufficient protection, such as covering the packages with painted cloth, tarpaulin, wadmill-tilts, or other suitable material.

An intoxicated person in charge may be apprehended.

A carrier must be informed of the nature of the package. (Order of Secretary of State, No.4).

The greatest amount in any one boat or carriage 2,000 pounds, except—

(1.) Where the carriage is protected on all sides with wood, or metal, when the maximum to be conveyed on a private railway is 10,000 pounds; in any other carriage 4,000 pounds.

(2.) In a boat, protected from fire from outside by decks, 50,000 pounds.

In a carriage or boat conveying over 100 pounds no matches, fire, or any substance likely to cause explosion or fire may be introduced (Order of Secretary of State, No. 4).

Hawking, Selling, etc., of Gunpowder.

Section 30 forbids hawking, selling, etc., in public places. Penalty, 40*s.*, and forfeiture.

Section 31, forbids selling to children *apparently* under thirteen years old. Penalty, 5*l.*

Section 32 forbids the sale of quantities over one pound except in substantial closed cases. And all cases must be conspicuously labelled "Gunpowder," etc. Penalty, 40*s*.

Reports to be made to Secretary of State *of any accident causing injury*, or loss of life, on registered premises, ship, carriage, etc. Penalty for failure, 20*l*. (s. 62).

Orders in council.—No. 1, 1*a*. Classification of explosives.

Orders, Nos. 2, 3, 4, 5, 6 and 6*a*. General rules applicable to factories, magazines and stores, etc.

No. 7, 7*a*, and 7*b*. Cancelled by Order in Council, No. 16.

No. 7*b*. Maximum amount of explosives mixed on registered premises.

No. 9. Sale of explosives.

No. 10. Importation of explosives.

No. 10*a*. Importation of fireworks.

No. 11. Notice of accidents in *conveyance* of explosives, but not gunpowder unless the latter exceeds 1,000 pounds.

No. 12. Relates to explosives for private use.

No. 13. Amends No. 6*a*, 7*a*, and 12, as to keeping and storing small arm nitro-compounds.

No. 14. Picric Acid, when deemed an explosive.

No. 15. Prohibition of sulphur explosive mixture.

No. 16. *Re* premises registered for mixed explosives. (To replace 7, 7*a*, 7*b*.)

Inspectors.—The Act is administered by Her Majesty's inspectors, or inspectors appointed by local authority. Police officers so appointed should hold *a written authority*, showable on demand, for their appointment.

Procedure.—Offender may be prosecuted either by indictment or in a summary manner, but the accused may claim the former.

Pecuniary penalties may in cases of wilful negligence where life has been endangered be supplemented by imprisonment not exceeding six months with or without hard labour (s. 79).

Explosive Substances Act, 1883.
(46 Vict. c. 3).

Explosions.—Causing explosion likely to injure life or property is a felony, punishable by penal servitude or imprisonment (s. 2).

Attempting to cause explosion or making or keeping

explosive with intent to cause, is felony (s. 3); as is also making or keeping explosives, under suspicious circumstances (s. 4).

Accessories are punishable as principals.

Procedure.—The Attorney-General may order an inquiry by a justice, who can summon witnesses, and arrest absconding witnesses, although no person may have been charged.

N.B.—The expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

Extortion.

Extortion is the taking of money by a public officer under the colour of office where none at all is due, or not so much due, or when it is not yet due. The offence is a misdemeanor, punishable by fine or imprisonment, or both (Russell on Crimes). See also THREATS, *post*,

Extradition and Fugitive Offenders.

Extradition treaties are made under the Extradition Act, 1870 (33 & 34 Vict. c. 52), amended by 36 & 37 Vict. c. 60.

Under these treaties persons charged with certain offences can be surrendered by either state to the other in accordance with the provisions of several treaties.

The Act of 1870 defines those crimes for which in this country extradition is allowed. Such are—murder and manslaughter, forging documents, uttering counterfeit money and counterfeiting it, embezzlement, larceny, false pretences, bankruptcy offences, fraud by bailees, rape, abduction, child stealing, burglary, arson, robbery, threatening letters, piracy, assaults, and conspiracies on the high seas.

The Act 36 & 37 Vict. c. 60, added considerably to this schedule: Kidnapping, false imprisonment, perjury, indictable offences under the Larceny Acts, the Malicious Injuries Act, the Forgery and Coinage Acts, the Bankruptcy

Acts, and any indictable offence under the Act of 1861 relating to offences against the person. The third section of the Act relates to accessories.

Where an arrangement has been made with any foreign state with respect to the extradition of criminals, Her Majesty may, by order in council, apply the Act; but no fugitive criminal shall be surrendered if the offence in respect of which the surrender is demanded is one of a political character.

Treaties have been made by the British Government with the following countries, viz:—

Austria.	Germany.	Russia.
Belgium.	Guatemala.	Salvador.
Brazil.	Hayti.	Spain.
Colombia.	Italy.	Sweden and Norway.
Denmark.	Luxemburg.	Switzerland.
Ecuador.	Mexico.	United States.
France.	Netherlands.	Uruguay.

The more serious felonies, such as murder, manslaughter, rape, robbery, arson, forgery, and larceny, are included in the treaties made with all the European states, as also are frauds and crimes against the bankruptcy laws. Persons charged with perjury may be extradited from France, Austria, Spain, the Netherlands, Belgium, Luxemberg, Switzerland, Russia, United States, Mexico, and certain republics in Central and South America; and bigamy is included in the treaties made with France, Spain and Belgium. The treaty with the United States (*a*) embraces the crimes of murder, assault with intent to commit murder, piracy, arson, robbery, forgery.

Procedure.—*All demands, whether by telegram or otherwise,* for the arrest of offenders fled, must be made to the Secretary of State for the Home Department.

(*a*) The treaty with the United States was embodied in 6 & 7 Vict. c. 76, which Act is repealed by 33 & 34 Vict. c. 52, save as provided by the 27th clause of that Act. Copies of the depositions may be given in evidence in the United States, but the persons producing them must certify they are *true copies.*

An order in council dated March 28th, 1890, gave further list of crimes also extraditable with United States.

Indecent assaults and carnal knowledge of children extraditable with France, Belgium and Luxemburg.

The general procedure for extradition of offenders escaping from the United Kingdom is for the prosecutor or police to apply to the Home Secretary, stating facts briefly and giving in detail information as to fugitive's supposed whereabouts and identification, accompanied by the warrant of arrest or a certified copy and deposition taken containing *primâ facie* evidence of the commission by the fugitive of the offence charged, such as in this country would justify his committal for trial, and an indemnity, signed by the prosecutor, undertaking to pay expenses, and stating whether it is desired that provisional arrest should be asked for by telegram.

The following circular on the subject has been issued by the Home Office :—

HOME OFFICE, WHITEHALL,
9th June, 1891.

SIR,—In the circular letter from this Department of the 21st April, 1890, forwarding a copy of a memorandum as to procedure in extradition cases, special attention was called to the third paragraph in the memorandum, which is as follows :—

"The application for the surrender of a fugitive criminal from a foreign country must be addressed by the prosecutor or the police, to the Secretary of State for the Home Department, who will communicate, through the Foreign Office and the proper diplomatic channels, with the authorities of the place where the fugitive is supposed to be.

"The chief officers of English police forces may communicate direct with the police of foreign countries for the purpose of giving or obtaining *information*, but under no circumstances should direct application be made to foreign police for the *arrest* of a fugitive. Serious difficulties have arisen in cases where this direction has been overlooked.

"Where the apprehension of a fugitive is a matter of urgency, the Secretary of State will apply by telegram for his provisional arrest in anticipation of the formal demand for surrender."

Attention had already been called to the same point in the Home Office circulars of 20th June, 1881, and 6th November, 1883.

The Secretary of State regrets that, notwithstanding these repeated instructions, cases have occurred in which chief officers of police have made direct application to the police or judicial authorities of other countries for the arrest of fugitive criminals ; and, though he has no doubt that by the great majority of chief officers his instructions have been noted and would, if occasion arose, be carefully observed, he is compelled once more to call attention to the matter, and to state that the rule against direct application to foreign police for the arrest of fugitives is one which in ordinary circumstances can admit of no exceptions ; and that any officer of police who hereafter disregards it will incur the severest censure.

In order to insure that these instructions are in no case overlooked or forgotten, the Secretary of State will be glad if you will reply to this letter stating that they have been brought to the notice of every officer in

the force who might in any circumstances be charged with the duty of sending telegrams or issuing descriptions of fugitives in extradition cases, and that they have been so noted in your office that, when any future change occurs in the command of the force, they would be brought under the notice of the new officer on his taking up his duties.

I am, Sir,
Your obedient servant,
GODFREY LUSHINGTON.

The Chief Constable
of the County
of———

The arrest of a fugitive criminal from a foreign state within the United Kingdom may be effected in two ways:—

(*a.*) Under sub-s. 1 of s. 8 of the Extradition Act of 1870, by a warrant from a metropolitan police magistrate at Bow Street upon receipt of the order of the Secretary of State, and on such evidence as would justify the issue of the warrant if the crime had been committed within the United Kingdom.

(*b.*) Under sub-s. 2, by any police magistrate or justice of the peace in any part of the United Kingdom on such information or complaint and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify a similar course if the crime had been committed, or the criminal had been convicted, in that part of the United Kingdom in which he exercises jurisdiction.

On the apprehension of any person under the Extradition Acts and the treaty with any country, he has to be brought before a magistrate of the Bow Street Police Court, London, even though the warrant may have been issued by a justice of the peace in some other part of the United Kingdom.

FUGITIVE OFFENDERS ACT, 1881. (44 & 45 Vict. c. 69.)

This Act deals with cases in which a person accused of having committed an offence in one part of Her Majesty's dominion is found in another part of such dominions. Such person is liable to be apprehended and returned in manner provided by this Act to the part from which he is a fugitive; he may be apprehended under an indorsed warrant or a provisional warrant.

Warrants may be indorsed by a judge of a superior court, the Secretary of State, a metropolitan police magistrate at Bow Street, by the governor of any British possession.

A provisional warrant may issue. A fugitive when apprehended must be brought before a magistrate, who shall hear the case in same way as if the person were charged with an offence within his jurisdiction.

[NOTE.—*Extradition Treaties also exist with Argentina, Liberia, Monaco, Orange Free State, Portugal, Roumania.*]

Factories and Workshops.

(41 Vict. c. 16.)

The Factory and Workshops Act, 1878, consolidates the statutes relating to the employment of persons in factories and workshops, and employers of labour incur penalties for contravention of Act. Inspectors are appointed to carry out the Act. An inspector if he apprehend obstruction in the discharge of his duty is empowered to take a constable with him into a *factory* by day or night: but the power is limited to a factory, and does not apply to a workshop (s. 68).

Section 93 defines the premises to which the Act applies.

Factories are premises in which machinery is moved by steam, water, or other mechanical power. A workshop is a place where no such power is used (*b*).

Section 23 provides for the education of children employed in factories.

The Factory and Workshop Act, 1883, is to be construed as one with the Factory and Workshop Act, 1878. It is divided into three parts:

Part I. relates to white-lead factories.

Part II. contains explanations of ss. 12, 53, and 56 of Factory Act, 1878, as to employment of children, young persons, and women.

Part III. relates to bakehouses.

See also titles BAKEHOUSES, EMPLOYERS AND WORKMEN, SHOPS, SERVANTS and APPRENTICES.

The Factory and Workshop Act, 1895, amends and extends the law in various respects.

For the purpose of the law relating to public health a workshop shall be so overcrowded as to be dangerous or injurious to health of the persons employed therein if the

(*b*) The exercise in a private house or room, by family, of manual labour for purposes of gain does not of itself constitute such place a workshop.

number of cubic feet of space in any room bears to the number of persons employed therein a less proportion than 250 or during overtime 400 cubic feet to each person (Factory and Workshop Act, 1895).

Shop Hours Regulation Acts, 1892 and 1895.

The Act (55 & 56 Vict. c. 62), limits the number of hours during which a "young person" may be employed in or about a shop (or on licensed premises), which are limited by s. 3 to 74 hours (including meal times) in any one week. A conspicuous notice referring to the provisions of the Act is to be exhibited in shops where "young persons" are employed. Penalty for contravention of Act, 2*l*. (Act of 1895).

The term "shop" means retail and wholesale shops, market stalls, and warehouses, and includes licensed public houses and refreshment houses of any kind.

The term "young person" means a person under the age of 18.

Note.—The Act is not to apply to shops where the only persons employed are at home, viz. members of the same family dwelling there.

Procedure as under Factory and Workshop Act, 1878.

False Alarms of Fire.

By the False Alarms of Fire Act, 1895 (58 & 59 Vict. c. 28), any person knowingly giving or causing a false alarm of fire to be given to any brigade outside the metropolitan area, whether by means of street alarm, message or otherwise, is liable to a penalty of 20*l*.

False Personation.

By 37 & 38 Vict. c. 36, any person who shall falsely and deceitfully personate any person, or the heir, executor or administrator, wife, widow, next of kin, or relation of any person with intent fraudulently to obtain any land, estate, chattel, money, valuable security, or property, shall be guilty of felony. The offence is not triable at sessions.

Any person falsely representing himself as any particular man in the regular, reserve, or auxiliary forces is guilty of

personation (44 & 45 Vict. c. 58, s. 142, sub-s. 2); and see sub-s. 3 as to person guilty of offence under False Personation Act, 1874, in relation to any military pay, pension, etc.

False Pretences.

The obtaining from any person any chattel (*c*), money, or valuable security with intent to defraud, is treated of under ss. 88 to 90 of the Larceny Act (see Appendix, *post*). The offence is a misdemeanor (*d*). Any person going about collecting charitable contributions under false pretences is liable to imprisonment under Vagrancy Act.

A "false pretence" is a false representation made either by words, writing, or conduct that some fact exists or existed.

The "pretence" must be of some *pretended existing fact*, and be made for the purpose of inducing the prosecutor to part with his property. The expression does not include a *promise* as to future conduct. Exaggerated praise or commendation of an article, sold in the ordinary course of business, is not a "false pretence."

The law of false pretences is involved in some obscurity.

The offence is distinguishable from larceny, inasmuch as the owner *consents* to the property being taken out of his possession, though such consent has been induced by fraud. In *larceny* the property is taken against the wish and intention of the owners; but if upon the trial of any person indicted for the misdemeanor of obtaining goods, etc., by false pretences, it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of the misdemeanor (24 & 25 Vict. c. 96, s. 88.)

The distinction between the offence of obtaining goods by false pretences and larceny is thus stated in *R.* v. *Prince*, 1 L. R. C. C. 150, and 19 L. T. 364:—"Where a servant is intrusted with a general authority to act for his master, and is induced by fraud to part with his master's property, the person who obtains the property by such fraud is guilty of obtaining it by false pretences, and not of larceny, because it is necessary in larceny that the taking should be against the will of the owner or of

(*c*) A dog is not a chattel.

(*d*) Incurring liability by obtaining credit by false pretences is a misdemeanor (32 & 33 Vict. c. 62, s. 13). See BANKRUPT, p. 86.

his authorized servant. But where a servant has no such general authority, but is merely intrusted with the possession of the goods for a special purpose, and is tricked out of that possession by fraud, the offender is guilty of larceny.

Evidence of previous attempts to obtain money by false pretences is admissible to prove guilty knowledge. *R.* v. *Francis*, 38 J. P. 469.

A false pretence may be made by the use of ambiguous words, if those words are naturally and reasonably capable of conveying the pretence; but the false pretence need not necessarily be in words, and therefore it has been held that where a party gave a cheque on a banker with whom he had no account (*R.* v. *Hazleton*, 44 L. J. 11), or obtained goods and money for a forged note of hand, or assumed the gown and cap of a commoner of the University of Oxford, and obtained money or goods by means of the fraud, the offence is within the statute (Russell on Crimes, p. 638).

Falsely pretending that a person will pay for goods on delivery is not a false pretence within the meaning of the statute.

The law of false pretences underwent an elaborate discussion in the case of *R.* v. *Byron*, 26 L. T. 84, and the court attempted to define the line betwixt commercial license and fraudulent misrepresentation. The question was further considered in *R.* v. *Foster*, 41 J. P. 295, where an adulterated and injurious mixture had been sold as good tea. In *R.* v. *Dickson and Hubbard*, Central Criminal Court, January, 1883, two men engaged in a system of "long firm" transactions were convicted of obtaining goods under false pretences. At Chester Assizes, February, 1878, two persons were convicted of conspiracy and obtaining money by false pretences by the fraud of advertising to lend money on personal security, and so obtaining and retaining money from applicants as preliminary expenses, the parties having no visible means of granting loans (*R.* v. *Spenser and Batterham*). The following are offences:—Obtaining a charitable gift by means of a begging letter containing a tale of fictitious distress (*R.* v. *Jones*, 19 L. T. 162); obtaining money by pretending to have power to communicate with spirits of deceased persons (*R.* v. *Laurence*, 1 J. P. 549); obtaining money by way of loan by means of false pretence (*R.* v. *Crossley*); falsely representing to a pawnbroker that a ring or chain was silver (*R.* v. *Bull* and *R.* v. *Roebuck*, 25 L. J. 101.)

A person entered a coffee tavern, and having had food attempted to leave without paying for it; he had not in fact any money wherewith to pay. The judge (Mr. PRENTICE, Q.C.) left the jury to say whether when the prisoner called for the food he intended to represent that he was of present ability to pay for it, and whether if so he was aware of his want of ability and intended to defraud. The prisoner was convicted at Middlesex Midsummer Sessions, 1883 (47 J.P. 507). See also 48 J. P. 682; 50 J.P. 483; and *R.* v. *Stewart*, at North London Sessions, October 8th, 1895, 59 J. P. 650. Cases of this kind are of frequent occurrence and occasionally come within the Debtors Act, 1869, s. 13.

Found committing.—Any person "found committing" an offence against 24 & 25 Vict. c. 96, s. 88 (FALSE PRETENCES, see Appendix), may be apprehended without warrant (s. 103); but if an interval of several hours intervene the arrest should be made under a warrant.

Trial.—The trial must take place where the chattel, money, etc., was obtained, or where the pretences were made. An article sent by post by request is "obtained" where the letter is posted (*R.* v. *Jones*, 19 L. J. 162).

Regarding "cheating" and "cheating at play," see title GAMING, *post*, and p. 107.

First Offenders Act, 1887.

(50 & 51 Vict. c. 25.)

This Act was passed for the purpose of endeavouring to bring about the reformation of persons convicted of first offences without subjecting them to imprisonment, regard being had to—

(1.) The youth, character, and antecedents of the offender;

(2.) The trivial nature of the offence, and any extenuating circumstances under which the offence was committed.

A person convicted for the first time of larceny or certain other offences may be released on entering into recognizances to come up for judgment when called upon.

Fisheries.

The duty of the constabulary regarding fisheries should be confined to the protection of public rights. The police should take notice of and report such breaches of the fishery laws as affect public interests, and of non-observance of close season, destruction of spawn, etc.

FRESHWATER FISHERIES.

The statutes known as the Salmon and Freshwater Fisheries Acts, 1861 to 1892, consist of:—

The Salmon Fisheries Acts, 1861, 1865, 1873, 1876, and certain Amendment Acts.

The Elver Fishing Act, 1876; and the Fisheries (Dynamite) Act, 1877.

The Freshwater Fisheries Acts, 1878, 1884, 1886.

The Salmon and Freshwater Fisheries Acts, 1886 and 1892; and the Fisheries Act of 1891.

The Freshwater Fisheries Acts, 1878 and 1884, are to be read as one with the Salmon Fisheries Acts, 1861 to 1876, and the provisions of the Acts of 1865 and 1873, as to the formation of fishery districts and the proceedings and powers of conservators, are to extend to all waters frequented by freshwater fish. Certain sections of the Act are not to apply to waters in Norfolk and Suffolk which are placed under the Norfolk and Suffolk Fisheries Act, 1877.

Fishing without licence.—Any person fishing in a fishery district with a rod and line for salmon, trout, or char without a proper licence. Penalty, 5*l.* (Salmon Fisheries Act, 1865, s. 35).

The public have no right to fish in a river made navigable by Act of Parliament but not tidal (the Itchen in Southampton), although they have fished in it as of right for many years without interruption. The jurisdiction is not ousted by a *bonâ fide* claim to such right with the view of having the question tried by an action, as such a right cannot *exist* at law; the navigation is private property subject to certain limited rights on the part of the public. *Hargeave* v. *Diddams*, L. R. 10 Q. B. 582; 40 J. P. 167.

"That is called an arm of the sea where the sea flows and reflows and so far only as the sea flows and reflows," "and only in such waters is there *primâ facie* a right of fishing common to all" (Hale, *De jure Maris*, p. 12).

Fishing with lights, spears, stroke hall, snatch, etc. (for purpose of foul hooking fish), penalty, 5*l.*; and using roe for bait, penalty 2*l.*

Fixed engine.—No fixed engine shall be used for purpose of taking salmon in any inland or tidal water.

Unclean (*c*) **fish.**—No person shall kill or take unclean or unseasonable salmon, trout, or char. Penalty, 5*l.*

(*c*) There is no definition of term, but it is generally taken to apply to fish just about to spawn or which have recently spawned.

Young of salmon.—No person shall wilfully take or destroy the young of salmon. Penalty, 5*l.*

Spawning.—If any person wilfully disturbs or attempts to catch salmon when spawning or when on or near their spawning beds. Penalty, 5*l.*

Annual close season.—No person shall fish for or attempt to catch salmon between September 1st and February 1st, both inclusive, called the "close season," except with a rod and line between September 1st and November 1st. Penalty 5*l.* and forfeiture of fish.

[The annual close season and weekly close time may be varied by Secretary of State, and bye-laws may be made as to times for killing trout].

No person shall fish for or attempt to catch trout or char between October 2nd and February 1st, inclusive. Penalty, 2*l.* and forfeiture of fish.

Weekly close time.—No person shall fish for, catch, or kill by any means other than a rod and line any salmon between noon on Saturday and 6 A.M. on Monday.

Eel baskets.—No person between January 1st and June 24th is to hang, fix, or use in any salmon rivers any baskets, traps, nets, or devices for catching eels or their fry (*f*), or place in any inland water any device to catch or obstruct fish.

Interpretation.—The expression "freshwater fish" in s. 11 of the Freshwater Fisheries Act, 1878, includes all fish (other than eels and pollan, trout and char) which live in fresh water except those which migrate to and from the open sea, and in the construction of the Freshwater Fisheries Act, 1884, which is to be construed as one with the Freshwater Fisheries Act, 1878, the expression means any fish living permanently or temporarily in fresh water exclusive of salmon.

Tributaries.—A water company's reservoir discharging its surplus water into a stream is not tributary, nor is a

(*f*) So much of this section (s. 15, 12 & 13 Vict. c. 26) as prohibits the taking of "elvers" or the fry of eels is repealed.

reservoir formed by an embankment constructed across a a river. *George* v. *Carpenter*, 57 J. P. 311.

Close time.—The period between March 15th and June 15th, both inclusive, shall be a close season for freshwater fish.

[As to illegally taking fish in private waters, see Larceny Act, s. 24.]

If any person during the close season fishes for or attempts to catch any freshwater fish in any river, lake, tributary, stream, or other water connected with or communicating with such river. Penalty, 40s.

The owner of any private fishery where trout, char, or grayling, are specially preserved is exempted, save as regards grayling, and under certain conditions persons authorized by owner are exempted.

Poison.—Any person who unlawfully and maliciously puts any poison, lime, or noxious material in any water frequented by freshwater fish with intent thereby to destroy same shall be liable to fine of 20*l*. (Act of 1884, s. 7). Penalty in cases where salmon frequent waters, 5*l*. (Salmon Fisheries Act, 1861), or may under Malicious Damages Act, 1861 (s. 32), be indicted for misdemeanor.

Sea Fisheries.

In some sea fisheries districts the police are instructed to assist in enforcing bye-laws made under the Sea Fisheries Regulations Act, 1888 (51 & 52 Vict. c. 54).

Shell-fish. (40 & 41 Vict. c. 42.)

Crabs.—No person shall take, have in possession, sell, expose for sale, consign for sale, or buy for sale—

(1.) Any edible crab which measures less than four inches and a quarter across the broadest part of the back; or

(2.) Any edible crab carrying any spawn attached to the tail or other exterior part of the crab, whether known as "berried crab," "seed crab," "spawn crab," "ran crab," or by any other name; or

(3.) Any edible crab which has recently cast its shell;

Penalty 2*l*. first offence, 10*l*. second offence and forfeiture of crabs (s. 8 of Act).

An exception is made where the crabs are intended for bait.

All crabs protected by the above section may be searched for, seized, and disposed of by any authority lawfully acting under any Act, charter, or bye-law, or by any person appointed by that authority, in like manner as if such crabs were found to be diseased or unfit for the food of man (s. 12).

Lobsters.—No person shall take or have in possession, sell, etc., any lobster which measures less than eight inches from the tip of the beak to the end of the tail when spread, as far as possible, flat. Fine 2*l.*, and 10*l.* for second offence.

The provisions as to search, inquiry, etc., in case of crabs apply also to lobsters.

Oysters.—A close season is provided for oysters:—For deep sea oysters, between June 15th and August 4th; for other oysters, between May 14th and August 4th.

The Act 47 & 48 Vict. c. 27 relates to cockles and mussels.

All oysters, crabs, and lobsters caught illegally may be searched for, seized, condemned, and destroyed by lawful authority.

Bait, etc.—44 Vict. c. 11 was passed to provide for the protection of clam and bait beds.

47 & 48 Vict. c. 27 enables the Board of Trade to make orders regarding cockles.

Food and Drugs (Sale of).

The Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63) and Amendment Act, 1879, although short and concise, owing to a large amount of litigation on technical matters, require the careful attention of officers of police if required to discharge duties as inspectors under the Acts.

The provisions of the principal Act (38 & 39 Vict. c. 63) may be tabulated as follows:—

(1.) Description of offences (ss. 1 to 10).
(2.) As to analyst and analysis (ss. 10 to 19).
(3.) Proceedings against offenders (ss. 20 to 28).
(4.) Expenses (s. 29).

(5.) Provisions as to tea (s. 30).
(6.) Interpretation, etc, (ss. 31 to 36).
[An analysis of the provisions of the Amendment Act is appended.]

The term "food" shall include any article used for food or drink by man other than drugs or water (s. 2).

The term "drugs" shall include medicine for internal or external use (s. 2).

1. Offences.

Injurious ingredients (food).—"No person shall mix colour, stain, or powder, or order or permit any other person to mix colour, stain, or powder any article of food with any ingredient or material so as to render the article injurious to health with intent that the same may be sold in that state." Penalty not exceeding 50*l.*; second offence, misdemeanor, six months' imprisonment (s. 3).

No person shall sell any such article so mixed, etc.

[**Peas.**—The South London quarter sessions held on appeal that a one pound bottle of peas containing three grains of sulphate of copper, used by the manufacturers for purpose of fixing or restoring the natural colour of the peas, rendered the article injurious to health. *Summers* v. *Grist*, 60 J. P. 346.]

(**Drugs.**)—Similar provisions apply to mixing, etc. (except for the purpose of compounding) any drug or selling same so mixed, etc. (s. 4).

Exemption—Absence of knowledge.—No person shall be liable to be convicted under foregoing sections if he can show that he did not know of the articles sold being so mixed, etc., and that he could not with reasonable diligence obtain that knowledge (s. 5).

Selling to prejudice of purchaser.—No person (*g*) shall sell to the prejudice (*h*) of the purchaser (see also p. 162, *post*) any article of food or any drug which is not of the

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(*g*) A servant who sells on behalf of his master is liable to be convicted. Whether the master is liable depends on whether he has guilty knowledge. *Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 55 J. P. 775.

(*h*) The offence consists in fraudulently handing to the buyer something to his prejudice; pecuniary prejudice is not, however, absolutely essential. *Hoyle* v. *Hitchman*, 43 J. P. 431.

The true construction is (*per* Cockburn, L.C.J.), that where the seller sells a particular and specific article, altered by admixture, he must be taken to have done so to the prejudice of the customer unless the same

nature, substance, and quality (see also p. 162, *post*) of the article demanded by such purchaser. Penalty 20*l.* (s. 6).

Provided that an offence shall not be deemed to be committed in the following cases, viz. :—

(1.) Where any matter or ingredient not injurious to health has been added to the food or drug for its production or preparation as an article of commerce, in a state fit for carriage or consumption, and not (*i*) fraudulently to increase bulk, weight, or measure of same, or conceal the inferior quality.

(2.) Where the drug or food is a proprietary medicine (*k*) or the subject of a patent in force and so supplied.

(3.) Where the food or drug is compounded (*l*) as mentioned in Act.

(4.) Where the food or drug is unavoidably mixed with

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be bought with customer's knowledge. *Sandys* v. *Small*, 47 L. T. 115 ; 42 J. P. 550.

In *Sandys* v. *Markham*, 41 J. P. 52, justices refused to convict for selling "mustard" without a label, the defence set up being that mustard of commerce or table mustard which is usually sold as mustard is a mixture of mustard-seed flour, wheaten flour, turmerick, and cayenne pepper, which are not injurious to health, and such mustard is considered by many persons more palatable than pure mustard ; and proof was given the lowest of three qualities manufactured by an eminent firm was of the same mercantile value and price as the pure flour of mustard-seed, so that a purchaser could not be said to be "prejudiced" by receiving the compound. The court remitted the case to the justices to re-state it more precisely as to the trade practice alleged, and whether the seller in their view of the facts came within the first section of the proviso as to this section. Upon this point *Horder* v. *Grainger*, 44 J. P. 188 ; 68 L. T. 371, may be referred to.

The "article demanded" must be held to be the article meant by an ordinary purchaser to be obtained not in any scientific definition. *Morton* v. *Green*, Reports of Cases in Courts of Justiciary, vol. viii., p. 41. "Milk" was asked for, and skimmed milk 60 per cent. deficient in butter fat was supplied. The Q. B. Division held defendant had not committed an offence under this section, as skimmed milk satisfied the demand made. *Lane* v. *Collins*, 49 J. P. 89 ; 14 Q. B. D. 193 ; 4 L. J. 76 ; 33 W. R. 365 ; 52 L. T. 257.

It is to be no defence to allege that the purchaser having bought for analysis only was not prejudiced by the sale (Food and Drugs Amendment Act, 1879, s. 2).

(*i*) As in the case of water added to spirits or milk.

(*k*) Sale of these medicines is entirely withdrawn from the operation of the Act, the remedy being left to the common law and the Merchandise Marks Act, 1862.

(*l*) There is no direction in the Act how an article is to be compounded ; the clause in the bill providing for compounding according to the British Pharmacopœia was struck out in the House of Lords.

some extraneous matter in the process of collection or preparation.

Compound article.—No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the *demand* (*m*) of the purchaser (s. 7).

Protection by label.—Provided that no person shall be guilty of any such offence—as aforesaid in respect of the sale of any article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended *fraudulently* to increase its weight, bulk or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice by label (*n*), distinctly and legibly written or printed on or with the article or drug to the effect that the same is mixed (s. 8).

False label.—Every person who shall wilfully give a label with any article sold by him, which shall falsely declare the article sold, shall be guilty of an offence. See under Warranty, s. 27 of Act. Penal 20*l*.

Abstracting quality.—"No person shall with the intent that the same may be sold in its altered state without notice abstract (*o*) from any article of food any part it of so as to

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(*m*) See *White* v. *Bywater*, 19 Q. B. D. 582; 51 J. P. 340 (purchase of tincture of opium below standard of British Pharmacopœia).

(*n*) The label is not a protection against fraud. When an article is sold in a labelled package, the justices must find whether the mixture is intended for a fraudulent purpose. A mixture 60 per cent. coffee and 40 per cent. chicory sold at the *price of pure coffee* was found to be a fraudulent mixture. *Lydian* v. *Reece*, 44 J. P. 233. The label is made by the statute sufficient notice, but if verbal notice be given before the sale the seller cannot be legally convicted. *Sandys* v. *Small*. The seller of a box of margarine fully labelled, but inclosed in a brown paper wrapper not so labelled, was protected, but costs were given against him. *Toler* v. *Bishop*, 1895. Where a label was given with "Epps' Cocoa," which did not distinctly or legibly state the cocoa was mixed, the type being so small that it required a magnifying glass, the justices convicted, but decision was reversed. *Attfield* v. *Tyler*, 57 J. P. 367.

(*o*) When milk is sold with the cream abstracted notice should be given, otherwise vendor may be liable. See *Lane* v. *Collins*, 49 J. P. 89; 4 L.J. 76.

A report of an investigation into the composition of genuine milk in August, 1893, by the chemical officers at Somerset House was sent March,

affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration under a penalty in each case of 20*l*" (s. 9).

2. Analyst and Analysis.

Sections 10 and 11 of Act provide for appointment, etc., of analyst. Under s. 12 *every purchaser* of an article of food or of a drug in any place for which an analyst has been appointed is entitled on payment of a fee of ten shillings and sixpence to have such article analysed [where there is no analyst for district, the sample may be submitted to the analyst of another place on payment of fee to be agreed upon.]

Section 13 relates to the obtaining of sample by *public* officer.

"Any medical officer of health (see also p. 162, *post*), inspector of nuisances or inspector of weights and measures, or any inspector of a market, or any police constable (*p*), under the direction and at the cost of the local authority appointing such officer, inspector or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspects the same to have been sold to him contrary to any provision of this Act shall submit the same (*q*) to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place, to the analyst of another place, and such analyst shall, upon receiving payment as is provided in

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1894, to local authorities. The results show that the non-fatty solids of milk from 273 cows varied from 7·52 per cent. (a shorthorn) to 10·4 per cent. (an Ayrshire), and the fat varied from 2.43 per cent. (a shorthorn) to 5·97 per cent. (a Jersey) ; 17 per cent. samples fell below of 8·5 per cent. in fatty solids.

In upholding a conviction that milk containing 22 per cent. less of fat than natural milk was not of the nature substance and quality demanded, the Q. B. Division declined to decide that to sell poor milk is an offence as a matter of law. *Battewell* v. *Davies*, 1894.

(*p*) It is not necessary to prove as a condition precedent that the officer was directed by the local authority appointing him to prosecute. *Hale* v. *Coke*, 55 J. P. 377.

(*q*) The inspector is not bound to submit for analysis the whole of the sample taken.

the last section, with all convenient speed (*r*), analyse the same, and give a certificate to such officer wherein he shall specify the result of the analysis (s. 13).

The certificate (*s*) shall be in the form set forth in the schedule to the Act or to the like effect (s. 18).

Section 3. Amendment Act allows officer to procure samples of *milk in course of delivery*, in pursuance of any contract (*t*) (p. 162, *post*).

Dealing with sample.—"The person purchasing any article *with the intention of submitting the same to analysis* shall after the purchase shall have been completed forthwith (*u*) notify to the seller or his agent selling the article his intention to have the same analysed by the (*x*) *public* analyst, and shall offer to divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one (*y*) of the parts to the seller or his agent. He shall afterwards retain one of the said parts (*y*) for future comparison, and submit the third part, if he deems it right to have the article analysed, to the analyst" (s. 14).

(*r*) In the case of a perishable article, proceedings must be taken within twenty-eight days from the time of the purchase for test purposes, and the summons is not to be returnable in less than seven days from service (Food and Drugs Amendment Act, 1879, s. 10).

(*s*) The certificate will be *prima facie* evidence for the prosecution, but the analyst is to be called if required by the defendant (s. 21; *Harrison* v. *Richards*, *post*, p. 304).

(*t*) The notice of intention to have the articles analysed and offer to divide the sample at s. 14 of Food and Drugs Act, 1875, are not necessary in proceedings under this section of this amending statute.

(*u*) Where the *actual buyer* handed the article to the inspector, who within two minutes went into the shop and divided the article and gave the notice, it was sufficient. *Stacy* v. *Smith*, 45 J. P. 141; *Garforth* v. *Esam*, 56 J. P. 56. S., an inspector, standing outside an inn, sent B., a constable, to buy gin. Both went to M., the innkeeper, two minutes after the constable's return, and told M. the gin was bought for analysis and divided it. Held, justices were wrong in holding the object of purchase was not notified "forthwith."

(*x*) It is not sufficient to state the article is purchased for the purpose of analysis; the purchaser must add the words "by the public analyst," the use of these words being a condition precedent to conviction (*Barnes* v. *Chipp*, 47 L. J. 85), but it is only necessary for the seller to have notice that the analysis is to be made by an official person, and the substitution of the words "county analyst" is immaterial. *Wheeler* v. *Webb*, 51 J. P. 661.

(*y*) These parts may have to be produced at the hearing if required (s. 21).

"If the seller or his agent *do not accept the offer* of the purchaser to divide the article purchased in his presence, *the analyst* receiving the article for analysis *shall divide the same into* two parts, and shall seal or fasten up one of those parts and shall cause it to be delivered either upon receipt of the sample or when he supplies his certificate to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter" (s. 15).

Sending articles to analyst.—"If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed such articles *may* (*z*) be forwarded to the analyst through the post office as a registered *parcel* (*a*) subject to any regulations which the Postmaster General may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act or of the *prosecution* as the case may be" (s. 16).

Analyst is required to report quarterly to the authority appointing him, such reports to be subsequently transmitted to Local Government Board (s. 19).

Refusing to sell articles for analysis.—"If any such (*b*) officer, inspector, or constable as above described shall apply to purchase any article of food or any drug exposed to sale, or on sale by retail on any premises or in any shop or stores, or in any street or open place of public resort (42 & 43 c. 30, s. 5), and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell (*c*),

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(*z*) On a question raised as to whether sending the article by rail is a legal delivery to the analyst, counsel (Mr. Glen) advised that such delivery is compliance with the Act.

(*a*) 54 & 55 Vict. c. 46, s. 11.

(*b*) The inspector is not bound to produce his authority unless it be demanded. *Payne* v. *Hack*, 58 J. P. 165; 95 L. T. 83.

(*c*) The general rule is that a shopkeeper is not bound to sell his wares to any person; until he has assented to the bargain he can always change his mind; it is, therefore, not competent to one of the public to go into a shop and insist on buying anything. It is only one of the above officers who can do so (39 J. P. 627).

the same to such officer, inspector or constable, such person shall be liable to a penalty not exceeding ten pounds (s. 17).

Similar penalties attach to refusal to allow sample of milk to be taken for analysis (Food and Drugs Amendment Act, 1879 (s. 4)).

3. Proceedings against Offenders.

If from certificate of analyst it appears that an offence against some one of the provisions of this Act has been committed, *the person* (*d*) *causing the analysis to be made* may take proceedings for the recovery of the penalty herein imposed for such offence before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser in a summary manner [as prescribed by the Summary Jurisdiction Acts]. Every penalty may be reduced or mitigated according to the judgment of the justices (s. 20) (Food and Drugs Act, 1879).

Summons—limitation of time.—Notwithstanding the provisions of s. 20 the summons shall be served upon the person charged with violating the provisions of the Act within a reasonable time, and in the case of a perishable article not exceeding *twenty-eight days* from the time of the purchase from such person for test purposes. The food or drug for the sale of which the seller is rendered liable to prosecution, and particulars of the offence or offences against the Act of which the seller is accused, and also of the name of the prosecutor shall be stated on the summons, and the summons shall not be made returnable in a less time than *seven days from the day* it is *served* upon the person summoned (Food and Drugs Amendment Act, 1879, s. 10).

Written Warranty.—"If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the

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(*d*) The power to proceed is limited to this person, and his name must appear on the summons. Where the sample had been obtained by a deputy of the inspector and handed to the analyst by the inspector the proceedings were rightly taken in the name of the inspector, and ss. 4 and 12 were sufficiently complied with. *Horder* v. *Scott*, 44 J. P. 520, 795; 49 L. J. 778. The actual purchaser in such a case is the inspector. *Stace* v. *Smith*, 45 J. P. 141.

same in nature, substance, and quality as that demanded of him by the prosecutor, and with a *written* (*e*) warranty to that effect; that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution (*f*), but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence" (Act of 1875, s. 25).

To give a false warranty is an offence under the Act. Penalty, 20*l.* (s. 27).

Analysis by chemical officers of the Crown. — The justices before whom any complaint may be made, or the court before whom any appeal may be heard under this Act, may upon the request of either party in their discretion cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department at Somerset House to make the analysis, and give a certificate to such justices of the result (*g*) of the analysis; and the expenses of such analysis shall be paid by the complainant or the defendant as the justices may by order direct (Food and Drugs Act, 1875, 38 & 39 Vict. c. 63, s. 22).

4. Expenses.

The expenses of executing the Act shall be borne as regards England (exclusive of metropolis and city of London) by the county rate in counties and the borough rate in boroughs (s. 29).

5. Tea.

Section 30 provides that tea shall be examined by the Customs on importation. "Tea" to which the term

(*e*) There must be an express written warranty; an invoice containing a mere description of the article (as "Lard No. 1") is insufficient. *Rooks* v. *Hopley*, 42 J. P. 551. An invoice written and delivered at the time of sale of butter contained the words "guaranteed pure." Held, it was a sufficient warranty. *Hawkins* v. *Williams* (1895).

(*f*) No provision is made for the prosecution of the wholesale dealer when the retailer has escaped, as was recommended by the select committee.

(*g*) The reference under this section is for the purpose of obtaining the result of the analysis merely; therefore the opinion of the chemical officers as to what is the minimum percentage of fat in new milk cannot be received as evidence. *Durges* v. *Dunbar*, 11 C. of Sess. Cas., 4th series (Justiciary), 37. See also p. 157.

"exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

Sale of Food and Drugs Act Amendment Act, 1879.

(42 & 43 Vict. c. 30.)

The preamble of the Act states that, "Whereas conflicting decisions have been given in regard to the meaning and effect of section six of the Sale of Food and Drugs Act, 1875, referred to as the principal Act, and it is expedient to amend the said Act: Be it enacted that—

"In any prosecution under the provisions of the principal Act for selling to *the prejudice of the purchaser* (*h*) any article of food or any drug which is not of the *nature, substance, and quality* (*i*) of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, *was not prejudiced by such sale.* Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was *not defective in all three respects*" (s. 2).

Milk.—"Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, *or any police constable* (*j*) under the direction and the cost of the local authority appointing such officer (*k*), inspector, or constable, or charged with the execution of this Act, may procure at the place of delivery *any sample of any milk* in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the same to be analysed, and the same shall

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(*h*) See p. 154, *ante*.

(*i*) See p. 155, *ante*.

(*j*) This description is similar to that given in s. 13 of principal Act, see note (*p*), p. 157, *ante*.

(*k*) Proceedings under this amending statute cannot be taken by a purchaser or consignee or by others than specified officers (s. 3), who alone are authorized to take the samples. *Harris* v. *Williams*, T. L. R., vol. vi., p. 47, Nov. 16th, 1889.

be analysed, and proceedings shall be taken, and penalties on conviction be enforced in like manner in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor under section thirteen of the principal Act" (s. 3).

"The seller or consignor or any person or persons entrusted by him for the time being with the *charge of such milk, if he shall refuse* to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty not exceeding ten pounds" (s. 4).

"Any street or open place of public resort shall be held to come within the meaning of section seventeen of the principal Act" (s. 5).

Spirits.—"In determining whether an offence has been committed under section six of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin" (*l*) (s. 6).

"Every liberty having a separate court of quarter sessions,

(*l*) This section of the amending statute was passed to meet difficulties in *Pashler* v. *Steeenhill*, 41 J. P. 136, and other cases. "Proof" spirit was proved to contain about one half part of water and one half pure alcohol; that the usual quality of gin retailed varies from proof to 20 per cent. under, and the appellant's gin (*Pashler* v. *Steeenhill*) was found to be 44 per cent. under proof. The Q. B. Division held that this was so great a difference that the justices were fairly justified in finding that it was fraudulently mixed to increase the bulk. This case was followed by *Webb* v. *Knight*, 2 Q. B. D. 530. In *Sandys* v. *Small*, 42 J. P. 550, a publican who had a printed notice put up, "All spirits sold here are mixed, 58 & 39 Vict. c. 63, ss. 8, 9," had not committed an offence in selling whisky mixed with 30 per cent. of water. In a later case, where rum contained 19 per cent. of water beyond the limit, and a notice was stuck up in the house to the effect that spirits sold there were diluted, the Q. B. Division held the mere notice itself was not a protection, and the justices should have determined whether the purchaser was prejudiced. *Morris* v. *Askew*, 57 J. P. 724. An innkeeper sold gin containing 40½ per cent. of water, and said, "This we sell to the public, and there is our notice," which stated that all spirits were diluted and no strength guaranteed. The Q. B. Division held justices were wrong in convicting. As notice of dilution was given to the purchaser, it was not a sale to his prejudice, and no offence was committed. *Gaye* v. *Elsey*, 10 Q. B. D. 518; 47 J. P. 391. See Stone, 29th ed., p. 292.

except a liberty of a cinque port, shall be deemed to be a county within the meaning of the said Act" (s. 7).

Quarter sessions boroughs not to contribute to county analysts (s. 8).

Borough with separate police.—"The town council of any borough having a separate police establishment, and being liable to be assessed to the county rate of a county, shall be paid by the justices of such county the proportionate amount contributed towards the expenses incurred in the execution of the Act by the several parishes within such borough" (s. 9).

As to s. 10, "limitation of time for proceedings," see p. 160, *ante*.

Margarine.

Under the Margarine Act of 1887 (50 & 51 Vict. c. 29), any officer authorized to take samples under the Sale of Food and Drugs Act, 1875, may, without going through the form of purchase provided by that Act, but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples, take for the purpose of analysis samples of any butter, or substances purporting to be butter, which are exposed for sale, and are not marked "margarine" as provided by this Act, and any such substance not being so marked shall be presumed to be exposed for sale as butter (s. 10).

Butter.—Shall be made exclusively from milk and cream (s. 3).

Margarine.—Consists of all substances in imitation of butter, whether mixed with it or not (s. 3).

Penalty.—Any person dealing in margarine, whether wholesale or retail, as manufacturer, importer, consignor or consignee, commission agent, or *otherwise*, found guilty of an offence under this Act, on summary conviction is liable to fine, not exceeding 20*l*. for first offence, 30*l*. for second, and 100*l*. for any subsequent offence (s. 4).

Exemption.—An employer when charged with an offence against this Act is entitled to have any other person he may lay an information against brought before the court at the

hearing. And, on the offence being proved, if he can show that he took all needful precautions to enforce the Act, and that the other person committed the offence without his knowledge or connivance, the said other person shall be convicted, and the employer exempted (s. 5).

Marking.—Every package of margarine, whether closed or open, must be durably marked "margarine" on top, bottom, and sides in printed capital letters, three-quarter inch square, and if exposed for sale, the capitals must be one-and-half inches square, and clearly visible to the purchaser (*m*), and if sold in wrappers, the latter must be printed "margarine" in quarter inch capitals (s. 6).

Any person accused under this Act can be discharged if he can show he bought the article in question as butter with written warranty, or invoice to that effect, and that he sold it believing it to be butter, and in the same state as he bought it. He must, however, to obtain costs, give notice that he will rely on the above defence (s. 7).

All margarine, whether foreign or not, must, when sent by public conveyance, be consigned as "margarine," and an authorized person may, on reasonable suspicion, obtain samples for analysis (s. 8).

Registering manufactories. — Every manufactory of margarine must be registered (s. 9).

Costs of analysis, etc.—The reasonable costs and expenses may be made good to the prosecutor if the court shall so direct out of penalties recovered (s. 11).

Proceedings. — Proceedings under this Act will be in accordance with the Sale of Food and Drugs Act, 1875.

Forcible Entry.

Everyone commits the misdemeanor called "forcible entry" who enters upon any lands or tenements, other than his own, in a violent manner, whether such violence consists in actual force applied to any other person, or in threats, or in breaking open any house, or in collecting

(*m*) For the penalty to be enforced, the substance must be "exposed" so as to be visible to customers. *Crane* v. *Lawrence*, 54 J. P. 471.

together an unusual number of persons for the purpose of making such entry. The statutes relating to this offence, the most recent of which is 1 James 1, c. 15, have been considered as obsolete. A question arising out of the statutes was recently before the House of Lords in the case of *Lowe* v. *Telford*, 40 J. P. 741, 771.

Forgery.

For statutory provisions as to forgery, see 24 & 25 Vict. c. 98, Appendix, *post*.

Forgery is defined as "the fraudulent making or alteration of a writing to the prejudice of another man's right." At common law the offence of forgery is a misdemeanor. By statutes certain forgeries have been made *felonies*.

Game.

The killing or taking of game *in the close season*, or on a Sunday or Christmas Day, or at any time without a game certificate under 23 & 24 Vict. c. 90, s. 4 (*n*), or the buying or selling game without being duly licensed to do so, are offences against the game laws, which are enforced by the excise authorities and not by the police.

"Game," as defined in the Game Laws Amendment Act, 1831 (1 & 2 Will. 4, c. 32), includes one or more hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards. Section 3 prohibits the laying of poison to destroy game. Eggs of birds of game, or of swans, wild ducks, teal, or widgeon are protected under s. 23 of the Act. Penalty for every egg, 5s. As to definition of "game" under other statutes, see p. 169, and title POACHING, *post*.

The duties of the constabulary in relation to game are very clearly defined in the Poaching Prevention Act (see title POACHING, *post*), and *are confined to the search*, etc., of suspected persons found in any highway, street, or public place. The police are *not to be employed* as watchers of game or gamekeepers, nor are they required to prosecute in cases of game trespass. As, however, application is

(*n*) Game licences expire on July 31st in each year.

frequently made to them for assistance in such cases, and in cases of "Night Poaching," where breaches of the peace are anticipated, the following digest of the provisions of certain statutes relating to game is given for the information and guidance of constables. As to killing hares and rabbits in warrens, see LARCENY ACT, Appendix, *post*. As to hares (*o*), see p. 170.

GAME TRESPASS.

1 & 2 Will. 4, c. 32, s. 30, enacts that a person committing a trespass by entering or being in the day time (*p*) on any land in pursuit of game, woodcocks, snipes, quails, landrails, or conies is liable to certain penalties.

Refusing to give name.—By s. 31, where any person shall be *found in any land*, or upon His Majesty's forests, parks, chases, or warrens *in search of game* or woodcocks, snipes, quails, landrails, or conies, it shall be lawful for any person having the right of killing the game upon such land, or for the occupier of the land, or for any gamekeeper or servant of either of them, or for any person authorized by either of them, to require the person so found forthwith to quit the land wherein he shall be so found, and also to tell his christian name, surname, and place of abode; and if such person shall, after being so (*q*) required, offend *by refusing to tell his real name or place of abode*, or by giving such a general description of his place of abode as shall be illusory for the purpose of discovery, *or by wilfully continuing or returning* upon the land, it shall be lawful for the party so requiring as aforesaid, and also *for any person acting by his order or in his aid*, to apprehend such offender, and to convey him or cause him to be conveyed before a justice of the peace—penalty, 5*l*: Provided always, that such person so apprehended shall be brought before some justice of the peace within the space of twelve hours, otherwise such

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(*o*) The close days for killing hares (not rabbits) are Sunday and Christmas Day. The *sale* of hares is prohibited from March to July inclusive under Hares Preservation Act, 1892.

(*p*) *Day time*—from hour before sunrise to hour after sunset.

(*q*) The trespasser must have been required to quit and tell his name, and wilfully continue or return. *R.* v. *Long*, C. & P. 314.

person must be discharged, but may be proceeded against for his offence by summons or warrant, as if no such apprehension had taken place.

The person to be apprehended must be found not only upon the land, but *in search and pursuit* of game. The moment he is off the land all power to seize him ceases without a warrant. Also the trespasser must have been required to quit and tell his name, and wilfully continue or return.

The offence must be in search of *live* game (*Taunton* v. *Jervis*, 43 J. P. 784); the words "entering and being" mean a personal and not a constructive entry. *R.* v. *Pratt*, 24 L. J. 113.

Using violence.—By s. 32 persons to the number of five or more found on any land in Her Majesty's parks, etc., in the day time (*r*) in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, any of such persons being armed with a gun, and any of such persons by violence, intimidation, or menace, preventing or endeavouring to prevent *any person described in s.* 31 (see p. 167), approaching them for the purpose of requiring them to quit the land, or to tell their names—and every person abetting—are liable to a penalty of 5*l.*

Seizure of game.—By s. 36, where any person shall be found *by day or night* on any land, etc., in search or pursuit of game, and shall have in his possession any game which shall appear to have been recently killed, any person having the right of killing game on such land, or the occupier, or any gamekeeper or servant of either of them, or *any person acting in aid of such persons*, may demand the game so found in his possession, and in case the same shall not be immediately delivered up, may seize and take the same from him for the use of the persons entitled to the game.

The demand must be made on the party while he is on the land, and if he resist, force may be opposed to force.

The Act is not to apply to persons coursing or hunting *in fresh pursuit*, with hounds or greyhounds, of deer, hare, or fox started upon other land (s. 36) (*s*).

The actual occupier or the owner of inclosed lands having a right to kill game thereon may kill hares without a game certificate. See also under Ground Game Act, 1880, *post*.

(*r*) Day time is defined to commence at the beginning of the last hour before sunrise, and conclude at the expiration of the first hour after sunset (s. 34).

(*s*) Trespass in *fox hunting* cannot be justified. See *Paul* v. *Summerhayes*, L. R. 4 Q. B. D. 9; 48 L. J. 33; 43 J. P. 188.

Prosecutions under the Act must be commenced within three calendar months, and on oath of witness.

Night Poaching Act, 1828 (9 Geo. 4, c. 69).

Any person unlawfully taking or destroying any game *or rabbits* by night in any land open or inclosed (*t*), or by night unlawfully entering or being on any land (*u*), whether open or inclosed, with any gun, net, engine, or other instrument for the purpose of taking or destroying *game* (*v*), is liable for a first and second offence to imprisonment, and for a third offence is guilty of a misdemeanor (s. 1).

Using violence.—Offenders assaulting or offering violence with gun, cross-bow, fire-arms, bludgeon, stick, club, or any other offensive weapon (*x*) whatever, to owners or occupiers of land, their gamekeepers, servants, or assistants, are guilty of a misdemeanor (s. 2).

The police are not to be employed as gamekeepers or watchers of game, *but they may assist in the apprehension of offenders "using violence."*

By s. 9, *persons to the number of three or more* together unlawfully by night entering or being on any land, open or inclosed, to take or destroy game *or rabbits*, any of such persons *being armed* with gun, cross-bow, fire-arms, bludgeon, or other offensive weapon, are guilty of a misdemeanor. The offence is not triable at sessions.

"Night" commences one hour after sunset, and concludes one hour before sunrise (s. 12).

"Game" includes hares, pheasants, partridges, grouse, heath or moor game, black game and bustards (s. 13).

Rabbits are coupled with game in ss. 1 and 9 of Act.

To support a charge of night poaching by three or more armed (s. 9), all the prisoners need not actually enter the land; if all are associated

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(*t*) Extended by 7 & 8 Vict. c. 29, to any public road, highway, or path, or the sides thereof, or at the opening outlets, or gates from any such land into any such road, highway, or path.

(*u*) Where the right to shoot and to the game is reserved to the landlord, the tenant cannot give permission to a person to *sport* on the land (*Pryce* v. *Davies*, 35 J. P. 374), but see now Ground Game Act, 1880.

(*v*) The second part of this section does not extend to rabbits.

(*x*) Large stones, if taken by the defendants for the purpose of inflicting bodily injury, come within the meaning of offensive weapons.

together for one common purpose, and some enter whilst others remain near enough to assist, it is sufficient (*y*). The land entered may consist of two closes held by different occupiers, and one may be inclosed and the other open.

The offender must be found upon the land or he cannot be apprehended. The word "found" was held to mean having been seen or discovered (*z*).

Prosecutions under this Act for offences punishable summarily must be commenced within six months.

Ground Game.

By the Hares Preservation Act, 1892, although no "close time" is provided, the *sale* of hares is illegal during the months of March, April, May, June, and July, during which hares or leverets must not be sold or exposed for sale, but this does not apply to foreign hares imported (*a*).

By the Ground Game Act, 1880, every occupier of land is to have as incident to, and inseparable from, his occupation of the land, the right to take and kill ground game, *i.e.*, hares and rabbits thereon, concurrently with any other person who may be entitled to kill and take ground game on the same land, subject to the limitations in clause 1. The occupier cannot divest himself of the right, but he may authorize in writing *one* person to kill ground game with fire-arms in addition to himself (*b*). The authority, can, however, only be given to—(1) members of his household resident on land (*c*); (2) persons in his service on such land; (3) one other person *bonâ fide* employed for reward for the purpose (43 & 44 Vict. c. 47).

Ground game must not be shot between the first hour after sunset and the last hour before sunrise. Traps, if used, must be set in rabbit holes, and use of poison is prohibited.

Note.—The occupier and persons authorized need not have game licences, but require gun licences.

(*y*) *R.* v. *Whittaker*, 17 L. J. 127; 12 J. P. 612.

(*z*) *Att.-Gen.* v. *Delano*, 1 Price, 383.

(*a*) See also note, p. 167.

(*b*) Occupier with power to kill rabbits can invite any number of people to shoot the animals without necessity of giving written permission, but if he has only "concurrent right" (under Act of 1880) he can authorize only *one* person.

(*c*) It is questionable whether this would apply to a temporary visitor.

Property in Game.

There is a qualified right of property in game *ratione soli*, the owner of the soil having a right to take it, and as soon as he has exercised that right the game becomes his absolute property. This was decided in *Blades* v. *Higgs* (29 J. P. 390) as to rabbits, and in *Lonsdale* v. *Rigg* (26 L. J. 196) as to grouse. Taking away dead rabbits is larceny; but it is otherwise when the wrongful taking and killing is one continuous act, for *it never was intended that poachers should be put on the same footing as felons*; so if the game be killed by poachers and left in a ditch and afterwards taken away by them the offence will not be larceny. *R.* v. *Townley*, L. R. 1 C. C. R. 315; 35 J. P. 709; and *R.* v. *Tilson*, 43 J. P. 122. A gamekeeper cannot be convicted of embezzlement of game where the wrongful killing and removing are one continuous act (*R.* v. *Read*, L. R. 3 Q. B. D. 131; 47 L. J. 50; 42 J. P. 470), and "nicking" or marking rabbits found concealed which had been wrongfully trapped by a keeper does not reduce them into the possession of the master (*R.* v. *Petch*, 38 L. T. 788; 42 J. P. 694) (Stone's Justices' Manual).

Gaming Act, 1845.

(8 & 9 Vict. c. 109.)

The Act prohibits any house being used as a common gaming house. Penalty on owner or keeper, or banker, croupier, or other person conducting business of house, 100*l.* (s. 4).

A common gaming house is one kept or used for playing therein at any unlawful game, and where a bank is kept by one or more of the players exclusively of the others, or where the chances of any game played therein are not alike favourable to all the players, including the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet (s. 2).

A justice may issue a warrant to enter and search suspected house, and persons found therein may be arrested (s. 3).

It shall not be necessary, in support of any information, for gaming, etc., to prove that any person found playing at any game was playing for any money, wager, or stake (s. 5).

Where any cards, dice, balls, counters, tables, or other instruments of gaming shall be found in any house, room, or place suspected to be used as a common gaming house, it shall be evidence, until the contrary be made to appear, of such place being a common gaming house, although no play was actually going on in the presence of the superintendent

or constable entering the same, the justices may direct all such tables and instruments of gaming to be destroyed (s. 8 of 17 & 18 Vict. c. 38).

Persons are liable to a penalty of 100*l.* for obstructing entry of constables authorized to enter suspected houses under 17 & 18 Vict. c. 38, s. 1, and under s. 2 of the same Act obstructing the entry of the constables is to be an evidence of the house being a common gaming house.

Under s. 3, persons found in gaming house giving a false name or address, etc., may be fined 50*l.*

Under 17 & 18 Vict. c. 38, the penalty for keeping a common gaming house, or assisting therein, or advancing money for the purpose of gaming, is 500*l.*

A betting house is to be deemed a "gaming house."

The Park Club Case.

The following are the results of the judgments in *Jenks* v. *Turpin*, 13 Q. B. D. 505; 53 L. J. 161; 49 J. P. 20, stated under 17 & 18 Vict. c. 38, s. 4, and known as the "Park Club Case":—

A house that is used partly as a social club *bonâ fide*, and partly as a house for gaming, is none the less a house opened and kept for "the purpose of gaming."

The proprietor and committeemen of such a club are liable to conviction under the statute; but the players, though possibly liable to be indicted for unlawful gaming in a common gaming house, are not liable to summary conviction under the statute (17 & 18 Vict. c. 38).

To constitute "unlawful gaming" it is not necessary that the games played shall be *unlawful* games; it is enough that the play is carried on in a "common gaming house." It makes no difference that the use of the house is limited to the subscribers or members of the club, and that it is not open to the public; it is not a *public* but a *common* gaming house that is prohibited. "Baccarat" is a game of chance and unlawful under the statute. (Judgment of Hawkins, J., June, 1884.)

In the same case, Smith, J., defined a "common gaming house" as a house kept or used for playing therein at any game of chance, or any mixed game of chance or skill, in which (1) a bank is kept by one or more of the players exclusively of the others, or (2) in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play or bet. It is immaterial whether the bank is kept by the owner or occupier or keeper of the house, or by one of the players.

The Gaming Houses Act, 1854, enacts that any person being owner, occupier, or having use of any house, office, room or place, who shall keep or use or permit the same to

be opened, etc., for the purpose of common gaming, or any person having care or management of or advancing or furnishing money for the purpose of gaming there, shall be liable to fine of 500*l.* and imprisonment with or without hard labour for twelve months.

Cheating at play.—See CHEATING, p. 107.

Gaming in public place.—The Vagrant Act (5 Geo. 4, c. 83) enacts that every person playing or betting in any street, road, highway, or other open or public place (*d*), at or with any table or instrument of gaming at any game or pretended game of chance, is to be deemed a rogue and vagabond (s. 4). This enactment is, however, repealed by the Statute Law Revision Act (No. 2), 1888 (51 & 52 Vict. c. 57), and the following clause of the Amendment Act, passed in 1873, is now operative.

By 36 & 37 Vict. c. 38, s. 3 (Amendment of Act), every person playing or gaming in any street, road, highway, or other place to which the public have access, at or with any instrument of gaming, or any coin, card, or token, may be apprehended and dealt with as a rogue and vagabond, or fined 40*s.* for a first offence, and 5*l.* on second conviction.

Although this statute does not in words repeal the enactment contained in 5 Geo. 4, c. 83, on the subject of gaming, the substitution of this clause for the former enactment removes some of the difficulties experienced in carrying out the law as it originally stood, not only as to the place, but as to the means used in gaming. In *Watson* v. *Martin*, 28 J. P. 775, playing at pitch and toss with halfpence was held not to be playing by way of wagering and gaming with any instrument of gaming. Under the present law playing with any coin, card, token, etc., will be an offence not only in any "open and public place," as to which questions frequently arose, but in any place to which the public are *permitted to have access*, as to which questions may still arise. See *Ex parte Friestone*, 25 L. J. 121. The offence can only be committed in a place to which the *public* have or are permitted to have access (Stone's Justices' Manual) (see Treat. 45 J. P. 481.)

ROULETTE.

By 18 Geo. 2, c. 34, any person keeping any house, room, or place for playing, or permitting or suffering any person whatsoever within any such house, room, or place, to play

(*d*) A railway carriage in transit is a public place. *Langrish* v. *Archer*, L. R. 10 Q. B. 44 ; 52 L. J. 47 ; 47 L. T. 548 ; 47 J. P. 295.

at roulette (*e*), or at any other game with cards or dice, prohibited by law, is liable to a penalty of 50*l*.

Gaming on Licensed Premises (*f*).

If any licensed person suffers any gaming or any unlawful game to be carried on on his premises, or opens, keeps, or uses, or suffers his house to be opened, kept, or used in contravention of 16 & 17 Vict. c. 119 (Act for the Suppression of Betting Houses), he is liable to a penalty of 10*l*.

The unlawful games are ace of hearts, pharaoh, basset, hazard, passage, roulet, every game of dice except backgammon, and every game of cards which is not a game of mere skill, and, *per* Hawkins, J., "I am inclined to add any other mere game of chance." Bowling, coyting, cloysh, cayls, half-bowl and tennis seem to have been games of mere skill, and remained unlawful games until 1845, when the Statute of 33 Hen. 8, c. 9, was repealed as to them and all other like games of skill by the "Gaming Act," 1845, 8 & 9 Vict. c. 109. (*Jenks* v. *Turpin*, 53 L. J. 161; 48 J. P. 420.) Cockburn, L.C.J., was of opinion that unlawful gaming was not a mere question of amount or of the means of the parties to pay for the stakes (*Danford* v. *Taylor*, 33 J. P. 227; see also *Dyson* v. *Mason*, 58 L. J. 55; 53 J. P. 262); but Smith, J. held that any game which had a tendency to injure public morals was unlawful, and it was immaterial whether a game was played for counters of no value or for thousands of pounds, and the tribunal hearing the case would have to determine if it became necessary whether the stakes played for, the position of the parties, and the circumstances under which they were played for had a tendency to injure public morals. *Jenks* v. *Turpin*, *supra*.

The statute 8 & 9 Vict. c. 109, allows alehouse keepers without a licence, and beerhouse keepers and others with a licence from justices, to keep a billiard table, bagatelle board, or instrument used in any game of the like kind, and repeals so much of 33 Hen. 8, c. 9, as prohibited any game of mere skill, as bowls, tennis, and the like.

But if those games or any other games as cards, dice, etc., be played for money or money's worth, or there be any betting on the game with the privity of the licencee, he will be guilty of an offence, as the section prohibits "*any* gaming."

Baccarat was held to be an unlawful game in *Jenks* v. *Turpin* (L. R. 13 Q. B. D. 505; 48 J. P. 420).

Playing at dominoes is not gaming unless money or money's worth is staked (*R.* v. *Ashton*, 22 L. J. 1).

(*e*) In *Jenks* v. *Turpin* (13 Q. B. D. 505), Hawkins, J., expressly alludes to roulette as an unlawful game.

(*f*) "Licensed premises" are defined under Act of 1874 (see p. 207).

Playing at skittles for beer, although the beer is not drunk on the skittle ground, is gaming. *Luff* v. *Leoper*, 36 J. P. 54.

Playing a game of skill (puff and dart), in which each player contributed towards a prize to the winner, was held to be within this section. *Bew* v. *Harston*, 42 J. P. 808 ; 47 L. J. 121.

In *Dyson* v. *Mason*, 58 L. J. 55 ; 53 J. P. 262, it was decided that playing for money was gaming, even although the game be a game of skill and played for recreation and small stakes.

A licencee will be liable to conviction if he permits even his private friends to play at cards or other game for money or money's worth. *Patten* v. *Rymer*, 29 L. J. 189. It is not necessary to prove actual knowledge of the licensed person or his manager, but it is enough to show gross negligence or wilful ignorance. As to constructive knowledge or something from which the justices could infer the landlord wilfully shut his eyes to what was going on, see *Bosley* v. *Davies*, 45 L. J. 27 ; 39 J. P. 774 ; *Redgate* v. *Haynes*, 45 L. J. 65 ; 40 J. P. 70 ; *Crabtree* v. *Hole*, 43 J. P. 799.

H., a betting man, stood for some hours on a piece of waste ground adjoining the back premises of a public-house and received from persons packets containing money for the purpose of backing horses running at Ascot races on that day. The landlord's daughter took the packets into the house at intervals, and when the betting was over H. went into the house and undid the packets and was found with a "paying-out sheet," used in connection with betting, but relating to racing on other days. H. was convicted under the Betting Act, 1853, for using the waste ground for the purposes of betting. The landlord knew the contents of the packets, but the Q. B. Division held he had succeeded in evading the Act. *Davies* v. *Stephenson*, 24 Q. B. D. 529 ; 59 L. J. Q. B. 305 ; 54 J. P. 565.

In *Bradford* v. *Dawson and Parker* (61 J. P. 134), it was held that the mere payment of bets in a public house, the bets having been made elsewhere, is not using the house for the purpose of betting within the meaning of s. 3 of the Betting Act, 1853 (16 & 17 Vict. c. 119).

Gun Licences.

(33 & 34 Vict. c. 57.)

Gun licences are issued by the Excise (duty 10*s*.). Licences expire on July 31st in each year. A register of licences is kept by the officers of Inland Revenue, and is open to the inspection of the constabulary. The term "gun" includes a firearm of any description (*g*), air-gun, etc.

Every person who shall use or carry a gun *elsewhere than in a dwelling-house, or the curtilage* (*h*) (viz., outbuildings, offices, yards, and inclosed ground *adjoining* to the house) *thereof*, without having in force a licence duly granted to him under the Act, shall forfeit the sum of 10*l*.

(*g*) A small toy pistol is a firearm. *Campbell* v. *Hadley*, 40 J. P. 756.

(*h*) An orchard separated from the house by an inclosed yard and a small garden beyond that is not within the curtilage. *Asquith* v. *Griffin*, 48 J. P. 724.

Exemptions.—The following persons carrying guns are exempted from penalty:—(1) Soldiers, sailors, volunteers, or police, carrying gun, etc., on duty; (2) Persons licensed to kill game; (3) Persons carrying gun belonging to and for use of person so licensed, or licensed under this Act, but such person is required to give name and address, etc., of himself and employer; (4) Occupiers of land scaring birds or killing vermin (this does not include rabbits) on such lands, or on any lands, by order of the occupier, who shall have a licence or certificate to kill game, or a licence under this Act; (5) Gunsmiths or their servants, carrying or using gun in ordinary course of trade; (6) Carriers carrying gun in ordinary course of business.

The term "scaring birds" does not extend to killing birds, but in August, 1884, the Board of Inland Revenue stated that where a person duly authorized by the holder of a game licence shoots rooks, sparrows, or rabbits for the protection of crops from their depredations no prosecution would follow.

Duty of police.—When a constable meets a person carrying a gun, who he has reason to suspect has not a gun licence for the current year, it is the duty of the constable to demand the production of the gun licence, and unless the person produces such licence or a game licence (*i*), the constable should require of him his name and address. If the person declares the same the constable should report the matter through his officers to the Inland Revenue. Should such person *refuse* to declare his name and address, the constable may *arrest* and convey him before a magistrate, who can deal with the case summarily.

Under s. 6 of 45 & 46 Vict. c. 72, if a person is charged with sporting without a game licence (under 24 & 25 Vict. c. 90, s. 4), and the court do not think it clear that he was using a gun for the purpose of killing game, they may acquit him of the charge, and if it appears that he has not a gun licence they may convict him under the Act of 1870 for using or carrying a gun without a licence.

Hawkers.

(51 & 52 Vict. c. 33.)

Hawkers.—The Hawkers Act, 1888, repeals 50 Geo. 3, c. 41, and consolidates the law regarding hawkers. Section 2 defines a "hawker" to be "any person who travels with a

(*i*) In no case should the constabulary demand the production of a game certificate where a gun licence is produced, as they have no duty to discharge as to whether persons have or have not a licence to kill game.

horse or other beast bearing or drawing burden and goes from place to place or to other men's houses carrying to sell or exposing for sale any goods, wares, or merchandise, or exposing samples or patterns of any goods, wares, or merchandise, or exposing samples or patterns of any goods, wares, or merchandise to be afterwards delivered, and includes any person *who travels by any means of locomotion* to any place in which he does not usually reside or carry on business, and there sells or exposes for sale any goods, wares, or merchandise in or at any house, shop, room, booth, stall or other place whatever hired or used by him for that purpose (*k*).

Hawkers have to take out a licence (duty 2*l*.), expiring March 31st in each year.

Exemption.—Certain persons are exempted:—Commercial travellers, the real worker or maker of any goods and his children and servants, sellers of fresh fruit, victuals, and coal, sellers of goods in any mart, market, or fair legally established (s. 3).

Hawking without a licence or not producing licence on demand is punishable by fine 10*l*.

A licence to hawk can only be granted on production of a certificate signed by a clergyman or minister and two householders of the parish or place wherein the applicant resides, or by a justice for the county or place or superintendent or inspector of police for the district wherein the officer to whom application is made for the grant of a licence resides, attesting that the applicant is of good character and is a proper person to be licensed as a hawker.

A hawker must keep his name and the words "licensed hawker" on every box or package and every vehicle used for the carriage of his goods, and on every room and shop in which his goods are sold, and on every handbill he distributes. He cannot hire or lend his licence to another. If an unlicensed person uses the words "licensed hawker," or other words to that effect, or trades under a licence granted to any other person, he may be fined 10*l*.

The hawking of gunpowder is dealt with under EXPLOSIVES ACT. For petroleum see PETROLEUM ACT.

An officer of Inland Revenue or a police officer may arrest a person hawking without a licence and convey him to a justice, who on his conviction may, in default of payment of penalty, commit offender for one month.

(*k*) See *Hudson* v. *Shorter*, 55 J. P. 325. S., usually residing at N., hired a room and sold wearing apparel there, and five days later did the same at a neighbouring town. *Held*, justices were wrong in not convicting. See also 60 J. P. 620, *re* conviction of canvassers "hawking" sewing machines. (Darlington Police Court, September, 1896.)

Highways.

(5 & 6 Will. 4, c. 50 (1835); 27 & 28 Vict. c. 101 (1864); 41 & 42 Vict. c. 77 (1878).

The police are required to enforce certain provisions of the Highway Acts, especially those relating to nuisances and obstructions (*l*).

By s. 25 of the Local Government Act, 1894, highway boards are to cease to exist, and to be succeeded by rural district councils, but county councils may suspend operation for three years from November, 1894. Where this is not the case all the provisions of the Highway Act, 1835, as to the surveyor (*m*) must be deemed to be superseded or transferred to the district council, which has, as respects highways, all the powers and liabilities of an urban sanitary authority under ss. 144 to 148 of the Public Health Act, 1875.

By the Local Government Act, 1888 (s. 3), the administrative busines of quarter sessions as to bridges and roads repairable with bridges and any powers vested by the Highways and Locomotives (Amendment) Act, 1878, in the county authority, is transferred to the county council, and the entire maintenance of *main* roads vests in that body.

If any highway is out of repair, or is not well and sufficiently repaired, and information on oath of one witness be given to a justice, such justice may summon the surveyor (now the rural district council) or other person or body politic or corporate chargeable with such repairs to appear before the justices at special or petty sessions (27 & 28 Vict. c. 101, s. 46).

On complaint that the highway authorities have made default in maintaining or repairing highways, justices of a county in general or quarter sessions may make an order limiting a time for performance of the duty, and if such order is not complied with may appoint a person to perform the duty and order the expenses to be paid by the authority in default (41 & 42 Vict. c. 77, s. 10).

Persons committing offences against the Highways Acts should be summoned, when their names can be obtained. Persons *refusing* to give their names and addresses may be *apprehended* without warrant by any surveyor or person acting under his authority, or *any other person* witnessing the commission of the offence (*n*).

"Highways" are defined to be all carriage or cart roads, bridleways, footways, bridges, causeways, churchways, and pavements.

(*l*) Sections 72—78, Act of 1835.

(*m*) Under Act of 1835 any surveyor leaving heap of stones in road at night to danger of any person is liable to penalty of 5*l*.

(*n*) Section 77, Act of 1835.

Encroachments.—Any person encroaching (*o*) by making or causing to be made any building, hedge, ditch, or other fence, or any carriage or cartway within the distance of fifteen feet from the centre of the road (s. 69). Penalty 40*s*. [Section 63 of Act defines "centre" of road.] The statute is extended by Highway Act, 1864, s. 51. No encroachment to be allowed which would reduce width of road to less than thirty feet between the fences (*p*).

It is not uncommonly believed that there is a right to inclose up to fifteen feet from the centre of the road. This is not so. The public have the right to the roadside waste beyond this limit. The owner of the land over which a public footpath lies has the right to maintain existing stiles or gates, but the use by the public must not be hindered by the erection of less convenient gates or stiles than have heretofore existed.

Steam engines, windmills, limekilns, etc.—No pit or shaft to be sunk, or steam engine or other like machine (*q*) to be erected within twenty-five yards, nor any windmill within fifty yards, nor any fire to be made for calcining or burning ironstone, limestone, bricks or clay, or coke, within fifteen yards from any part of any carriage or cartway, unless the same be within some house or building, or behind some wall or fence sufficient to conceal or screen the same from such way. Penalty 5*l*. for every day same shall continue (s. 70).

Quarries.—Dangerous to public and within fifty yards of highway must be kept fenced (50 & 51 Vict. c. 19).

Trees, hedges, ditches.—A justice of the peace can compel owner (which includes occupier) to cut trees, etc., which obstruct or prejudice any carriage way, on complying with directions herein contained (ss. 64 –66), and can order surveyor to scour ditches (s. 67).

The following is an epitome of the sections (72—78) relating to nuisances and obstructions:—

Various offences.—Section 72.—To wilfully (*r*) ride, lead or drive any horse, ass, sheep, mule, swine, cattle or

(*o*) Section 51 of 27 & 28 Vict. c. 101, contains further provisions regarding encroachments, removing turf from roadside, etc.

(*p*) This supersedes decision in *Chapman* v. *Robinson*, 28 L. J. 30.

(*q*) Locomotive ploughing machines are exempt under 28 & 29 Vict. c. 83, and locomotive threshing machines under 57 & 58 Vict. c. 37, s. 2, provided in each case a person is stationed as directed.

(*r*) "Wilful" means "purposely."

carriage (*s*) of any description, or any truck or sledge, upon any footpath or causeway by the side of any road (*t*) made or set apart for the use or accommodation of foot passengers. To tether any ass, sheep, mule, swine or cattle on the highway so as to suffer the tethered animal to be thereon. To cause any injury or damage to be done to any highway, or the hedges, posts, rails, walls, or fences thereof, or wilfully obstruct the passage of any footway (*u*), or wilfully destroy or injure the surface of any highway, or wilfully or wantonly grub up, cut down, remove or damage the posts, blocks, or stones fixed by the surveyor as there directed, or dig or cut down the banks which are the securities and defence of the highways; or break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injure or deface the same; or pull down or destroy, or obliterate or deface any mile-stone or post, graduated or direction post or stone erected upon any highway, or *play at football* or other game (*v*), on any part of the highway to the annoyance of any *passenger* or *passengers*: or if any hawker, higgler, gipsy or other person travelling shall *pitch any tent*, booth (*w*), stall or stand, or encamp upon any part of the highway; or if any person shall make or assist in *making any fire*, or wantonly fire off any *gun or pistol*, or set fire to or wantonly let off or *throw any squib*, rocket, serpent (*x*), or other firework whatsoever, within fifty feet of the centre of any carriage or cart way; or bait or run for the purpose of *baiting any bull* upon or near the highway; or lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon the highway to the INJURY OF SUCH HIGHWAY, OR TO THE INJURY, INTERRUPTION, OR PERSONAL DANGER OF ANY PERSON TRAVELLING THEREON, or suffer any filth, dirt, lime, or other offensive matter or thing whatsoever to run or flow into or upon any highway from any

(*s*) Bicycles and tricycles are carriages. See BICYCLES.

(*t*) *R.* v. *Pratt*, 32 J. P. 246, "footpath by side of highway."

(*u*) Ploughing a footpath usually ploughed over is not an offence. *Mercer* v. *Woodgate*, 23 J. P. 759.

(*v*) A mock hunt, with fancy dresses and trumpets, after a man dressed like a stag, is a game. *Papping* v. *Maynard*, 27 J. P. 745. A bicycle race on a highway would also probably be considered a game. See 33 J. P. 562.

(*w*) Except where uninterrupted custom for twenty years.

(*x*) See Explosives Act.

house, building, erection, land or premises adjacent thereto; or if any person shall in any way obstruct the free passage of any such highway; [The words in capitals qualify and override words of section from "if any hawker," etc.

The offender shall, for every offence, be liable to a penalty of 40*s*., in addition to liability to make good the damage occasioned.

Timber and rubbish.—Section 73.—If timber, soil, rubbish, etc., or other matter or thing be laid on a highway (*y*) so as to be a nuisance, and shall not, after notice by the surveyor, be forthwith removed, it shall be lawful for the surveyor, by order in writing from one justice, to clear the highway by removing the timber, etc., and to dispose thereof, and to apply the proceeds towards the repair of the highways within the parish, but if not of sufficient value to defray the expenses of removal, the person who laid or deposited the soil, etc., shall repay the surveyor such expense, which shall be levied as other forfeitures.

Cattle straying.—Section 25 of Highway Act, 1864. [This section is substituted for s. 74 of Act of 1835.] If any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine, is at any time found straying or lying about any highway (*z*), or across any part thereof, or by the side thereof (except in any parts of any highway as pass over any common or waste, or uninclosed ground), the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding 5*s*., to be recovered in a summary manner, together with the reasonable expense of removing such animal from the highway where it is found to the field or stable of the owner or owners, or to the common pound, if any, of the parish where the same shall be found, or to such other place as may have been provided for the purpose. Provided always that no owner of such animal shall in any case pay more than the sum of 30*s*., to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the

(*y*) The justices must determine whether the road is a highway or not if the jurisdiction is disputed. 52 J. P. 788, 818.

(*z*) The offence is complete if cattle be "straying or lying" whether with or without keeper, even though owner has right to herbage. *Golding* v. *Stockton*, 33 J. P. 278.

authorized keeper of the pound. Provided also that nothing in this Act shall be deemed to extend to take away any right of pasturage (*a*) which may exist on the sides of any highway.

Pound breach.—Section 75 of Highway Act, 1835, relates to pound breach, viz., releasing of cattle properly impounded before discharged by due course of law. Penalty 20*l*.

Carts and drivers. –Sections 76, 77.—The owner's true name, with trade or abode, must be legibly painted in letters one inch long on the off side of the waggon, cart or other such carriage, or the off side shafts thereof, as detailed in s. 76 of Act of 1835, under a penalty of 40*s*. When one person acts as *driver of two carts* the horse of the hinder cart shall be attached by a rein (not exceeding four feet in length) to foremost cart, and if not so attached, penalty 20*s*.

Offences by drivers.—Section 78.—If the driver of any waggon, cart, or other carriage of any kind shall ride upon such carriage, or upon any horse or horses drawing the same on any highway, not having some other person on foot or on horseback to guide the same (such carriages and carts as are driven with reins, and are conducted by some person holding the reins of all the horses drawing the same, excepted), or if the driver of any carriage whatsoever, on any part of a highway, shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person, horse, cattle, or goods conveyed in any carriage passing or being upon such highway, or shall quit the same and go on the other side of the hedge or fence inclosing the same, or shall negligently or wilfully be at such distance from such carriage, or in such a situation (*b*) whilst it shall be passing upon such highway that he cannot have the direction and government of the horses or cattle drawing the same, or shall leave any cart or carriage on such highway so as to obstruct the passage thereof, or if any person shall drive or act as the driver of any waggon, cart, or other such carriage, not having the true owner's name as thereby required, and

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(*a*) See 32 J. P. 498, and *Coverdale* v. *Charlton*, 43 J. P. 268.

(*b*) It is no defence that the carriage was standing still upon the highway and that no obstruction was caused if the driver was absent. *Phythian* v. *Baxendale* (1895), 59 J. P. 217.

shall refuse to tell or discover the true christian name and surname of the owner or principal owner of such carriage, or if the driver of any waggon, cart or other carriage whatsoever, or of any horses, mules, or other beasts of draught or burthen, meeting any other waggon, cart or other carriage whatsoever, or horses, mules, or other beasts of burthen, shall not keep his waggon, cart, or carriage, or horses, mules, or other beasts of burthen, *on the left or near side* (*c*) *of the road*, or if any person shall in any manner *wilfully prevent* any other person from passing him, or any waggon, cart, or other carriage or horses, mules, or other beasts of burthen under his care, upon such highway, or by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any person, waggon, cart, or other carriage, or horses, mules, or other beasts of burthen, on any highway, or shall not keep his waggon, cart, or other carriage, or horses, mules, or other beasts of burthen, *on the left or near side* of the road, for the purpose of allowing such passage, or if any person riding any horse or beast, or driving any sort of carriage, shall ride or drive the same furiously (*d*), *so as to endanger the life or limb of any passenger*. Penalty, 5*l*., if driver be not owner, or 10*l*. if he be owner, and in default imprisonment for six weeks.

Bye-laws.—The justices of a county (*e*) in general or quarter sessions assembled may make bye-laws with respect to main roads (*f*) or highways within any highway area in their county,—

Prohibiting or regulating the use of waggons, etc., drawn by animal power, having wheels of which the fellies or tires are not of such width as may be thereby specified;

Prohibiting, etc., the use of any waggon, etc., not having

(*c*) The Q. B. Division held, June 22nd, 1889, that there is no such rule of the road as to make the left always the proper side when there is danger in keeping to the left. *Finegan* v. *London & North Western Railway*, 53 J. P. 663.

(*d*) This will include furious riding, although penal part of enactment omits mention of rider. *Williams* v. *Evans*, 41 J. P. 151. Where Towns Police Clauses Act is in force, offence may be prosecuted under that statute.

(*e*) This business has been transferred to the county council (51 & 52 Vict. c. 41, s. 3, sub-s. (8).)

(*f*) By the Highways and Locomotives Act, 1878 (41 & 42 Vict. c. 77, s. 13), disturnpiked roads are to be main roads, and one half of the expenses of maintenance is to be contributed out of the county rates.

the nails on its wheels countersunk, or having on its wheels bars or other projections forbidden by such bye-laws;

Prohibiting, etc., the locking of the wheels of any waggon, etc., when descending a hill, unless there is placed at the bottom of the wheel during the whole time of its being locked a skidpan, slipper, or shoe in such manner as to prevent the road from being destroyed or injured by the locking of such wheel;

Prohibiting, etc. erection of gates across highways and prohibiting gates opening outwards on highways (Highway and Locomotive Act, 1878).

Locomotives.

The use of locomotives on turnpike roads and other roads (except light locomotives) is regulated by the Locomotives Act, 1861 (24 & 25 Vict. c. 70). The Act is amended by 28 & 29 Vict. c. 83, and further provisions are contained in 41 & 42 Vict. c. 77; 42 & 43 Vict. c. 67; and 46 & 47 Vict. c. 43. The Acts with slight exceptions are not to apply to light locomotives. See Light Locomotives, *post*.

Locomotives can only be used on highways subject to certain rules for working, and certain restrictions as to speed, consumption of smoke, etc. Penalty for infringement of rules, 10*l*. The name and residence of owner are to be affixed to locomotive.

Rules for working.—Three persons (*g*) at least must be in charge of the locomotive, one to precede locomotive on foot by not less than twenty yards, and shall, in case of necessity, assist horses and carriages drawn by horses. The whistle is not to be sounded nor steam blown off while on the road.

Locomotives can be stopped by any person in charge of a horse or carriage, and at night (one hour after sunset and one hour before sunrise), must carry two conspicuous lights, one on each side of the front of the locomotive (28 & 29 Vict. c. 83, s. 3).

Speed.—Subject to regulation of the local authority under bye-laws, the speed of a locomotive must not be more than four miles an hour along a turnpike road or highway or more than two miles an hour through any town or village (28 & 29 Vict. c. 83, s. 4).

(*g*) If more than two waggons be attached, an additional person shall be employed.

Smoke.—Any person using any locomotive on any turnpike road or highway not constructed on the principle of consuming its own smoke, or not consuming, so far as practicable, its own smoke, is subject to a penalty not exceeding 5*l.* for every day during which such locomotive is so used (41 & 42 Vict. c. 77, s. 30).

Weight.—For restrictions as to weight and width, construction of wheels (*h*), etc., see 41 & 42 Vict. c. 77, s. 28; and Locomotive Act, 1861, s. 4.

Bye-laws.—Bye-laws (*i*) may be made as to the hours during which locomotives (*k*) may not pass over roads, the hours to be consecutive hours, and not more than eight out of the twenty-four, and for regulating use upon highways, or preventing use upon any bridge where it would be attended with danger to the public, under penalty of 5*l.* (41 & 42 Vict. c. 77, s. 31).

County authorities may also make bye-laws for licensing (*l*) locomotives to be used within the county, and fee (not exceeding 10*l.*) to be paid for licence. This section is not to apply to any locomotive used solely for agricultural (*m*) purposes (s. 32). See Local Government Act, 1888, s. 35, sub-s. 4, as to making these bye-laws in quarter session boroughs.

Homicide.

Homicide is the killing (*n*) of a human being by the act of another human being.

Homicide is of three kinds—Justifiable, Excusable, or

(*h*) Drag wheels are to be soled or shod with diagonal cross bars.

(*i*) Bye-laws are made in the "public interest." Any person (a constable) can prosecute for breach of same. *Badcock* v. *Sankey*, 54 J. P. 564.

(*k*) Persons using traction engine and trucks on a highway may be indicted for a nuisance if they create a substantial obstruction. *Reg.* v. *Chittenden*, 49 J. P. 503.

(*l*) Tramways may use the engines unlicensed.

(*m*) "Agricultural purposes," user. See *Ellis* v. *Hulse*, 23 Q. B. D. 24; 53 J. P. 598, as to drawing trucks with manure for hire; also *March* v. *Baker*, as to drawing machine from farm to farm. 55 J. P. 583.

(*n*) Death must take place within a year and a day from the time the injury was inflicted, otherwise the law presumes that the injury was not the cause of death, and it cannot be deemed homicide. [Justices' clerk is required to inform Solicitor of Treasury upon a capital charge being made.]

Felonious—the latter coming under the definition of either "murder" or "manslaughter." These crimes are dealt with under 24 & 25 Vict. c. 100; see also Chap. V. p. 26, *ante*.

Justifiable homicide is occasioned in the execution or advancement of justice, or for the prevention of forcible or atrocious crime. In such cases there must be an apparent necessity.

Excusable homicide is occasioned by misadventure or accident, or in self-defence.

As to the doctrine of "necessity," see p. 187.

Murder is thus defined by Lord Coke:

"Where a person of sound memory and discretion unlawfully kills any reasonable creature with malice aforethought, express or implied."

Manslaughter is unlawful homicide, committed without premeditation. It may be voluntary upon a sudden affray, or involuntary, but in the commission of some unlawful act.

No provocation will justify or excuse it. The crime will in some cases amount to murder or manslaughter according to the fact whether since the provocation there has been sufficient time for passion to subside.

As to prosecution of quacks for occasioning death of patients, see *R.* v. *Crook*, 1 F. & F. 521. The question for jury will be whether prisoner acted with criminal inattention, rashness or carelessness. A parent cannot be convicted of manslaughter for wilfully neglecting, on account of his religious views, to provide medical aid for his child, unless it can be proved that death was accelerated or caused thereby. *R.* v. *Morby*, 51 L. J. 85; 46 J. P. 442. Nor a parent for omitting to call in a medical man to his son suffering from inward inflammation. *R.* v. *Hines* (Peculiar People), C. C. Court, August, 1874. Nor a mother for not sending for a midwife for her daughter. *R.* v. *Shepherd*, 31 L. J. 102.

Where several persons participate in the commission of a dangerous act, they may all be convicted. So three rifle volunteers who had fired off cartridges at a board in private grounds, one of which killed a boy who had climbed up into a tree in a garden about 400 yards off, were all equally guilty, although it was not clearly shown which shot caused the death. *R.* v. *Salmon and Others*, 50 L. J. 25; 45 J. P. 270.

The following acts are given by Mr. Justice Stephen as amounting to such provocation as may reduce homicide from murder to manslaughter:—

An assault or battery inflicting bodily harm or great insult. Two persons engaged in a sudden fight or unpremeditated duel. Unlawful imprisonment or unlawful arrest. Witnessing act of adultery committed on wife, or unnatural offence on son.

Necessity.

A person may successfully justify killing another in self-defence, but he must not take away the life of an innocent person to save his own.

The doctrine that homicide is excusable by reason of *necessity* was fully discussed in *R.* v. *Dudley*, 49 J. P. 69; 54 L. J. 32 (*The Mignonette* case). Three seamen and a cabin boy being shipwrecked, and having escaped in an open boat, were eighteen days exposed; for seven of these days they had been without food. The men killed the boy and fed upon his body, and were eventually rescued. It was held they were guilty of murder, as the killing was not in self-defence, nor justifiable on any ground of necessity.

As to killing a burglar, see "Stephen's Commentaries," 8th ed., vol. iv., p. 49: If any person attempts the robbery or murder of another, or attempts to break open a house in the night time, and shall be killed in such attempt either by the party assaulted or the owner of the house, or the servant attendant upon either, or by any other person present and interposing to prevent mischief, *the slayer shall be acquitted* and discharged." See also Stephen's Digest of the Criminal Law, p. 124.

Culpable Negligence.

Any person upon whom the law imposes a duty, or who has by any act taken upon himself any duty tending to the preservation of life, if he neglects to perform that duty by want of attention and caution, and thereby causes the death of any person, is guilty of "culpable negligence."

Horseflesh.

(52 & 53 Vict. c. 11.)

The Horseflesh (Sale of) Regulation Act, 1889, contains the following provisions:—

No person shall sell, offer, expose or keep for sale, any horseflesh for human food elsewhere than in a shop, stall or place, over or upon which there shall be at all times painted, posted, or placed, in legible characters of not less than four inches in length, and in a conspicuous position, and so as to be visible throughout the whole time, whether by night or day, during which such horseflesh is being offered or exposed for sale, words indicating that horseflesh is sold there (s. 1).

Section 2 provides that no person shall supply horseflesh for human food to a purchaser who has asked to be supplied with some meat other than horseflesh.

Section 3 provides that any medical officer of health or other officer of a local authority may inspect and examine meat supposed to be horseflesh, exposed for sale, and

intended for human food, in any place other than such shop, stall, or place as aforesaid, and to seize and carry away same.

Under s. 4 search warrants may be issued.

Section 5 provides for the disposal of flesh seized, and further deals with the offender on whom the *onus* of proof is thrown.

Horseflesh includes flesh of asses and mules.

Housebreaking.

The same conditions apply to Housebreaking as to Burglary (see p. 28), but the breaking and entering must be by day (6 A.M. to 9 P.M.) instead of night (24 & 25 Vict. c. 96, ss. 56 and 57).

Indecent Advertisement Act, 1889.

(52 & 53 Vict. c. 18.)

It is an offence under this Act to affix to any house, wall, fence, etc., so as to be visible from any street, highway, or footpath, or to affix or inscribe in any urinal, or to deliver, etc., to any inhabitant or person passing along the street, etc., or throw down areas of houses, or exhibit in window of house or shop any picture or printed matter which is of an indecent or obscene nature.

Punishment, fine of 40*s*., or in discretion of court, imprisonment for one month (s. 3).

It is also an offence to send others to do the above-mentioned acts (s. 4).

Section 5 defines advertisements declared indecent.

Arrest.—Police are authorized *to arrest on view* any persons found committing offence against Act (s. 6).

Indictable Offences Act, 1848.

The Act prescribes course of procedure, *re indictable offences.*

This Act (11 & 12 Vict. c. 42), with the Summary Jurisdiction Act of same year are generally known as Jervis' Acts. See Appendix, *post*.

Under its provisions a justice is empowered to issue a summons or warrant against any person charged with having committed any indictable

offence within his jurisdiction, or against any person residing therein, suspected of committing any such offence elsewhere. Further provisions, *re* attendance of witnesses, etc.

A justice can remand the accused for further examination from time to time for not exceeding *eight clear days*, or by *verbal order* for three days.

Bail.—Instead of detaining the accused in custody the justice may take his recognizance, with or without sureties, for his further appearance, and admit to bail the person charged. The committing justices may certify on warrant of commitment a consent that the accused be admitted to bail, (stating amount), and in such cases any justice attending at the prison where the accused shall be in custody may, on production of such certificate, admit him to bail. See also title SUMMARY JURISDICTION, *post*.

Industrial Schools.

A school in which industrial training is provided, and in which children are lodged, clothed, and fed, as well as taught, shall be deemed an industrial school within the meaning of the Act (29 & 30 Vict. c. 118). Such school when certified by Secretary of State shall be deemed a certified industrial school, and shall be under the supervision of inspectors appointed by Secretary of State. Any person may bring children coming within any of the following descriptions before two justices, who may order them to be sent to a certified industrial school:—

1. Any child, apparently under the age of fourteen years, found begging or receiving alms (whether actually or under pretext of selling or offering for sale anything), or being in any street or public place for the purpose of so begging or receiving alms, or found wandering and not having any home, or settled place of abode, or proper guardianship, or visible means of subsistence, or found destitute, either being an orphan, or having a surviving parent who is undergoing penal servitude or imprisonment; or that frequents the company of reputed thieves, or (by 43 & 44 Vict. c. 15) is lodging, living, or residing with prostitutes, or in house frequented by prostitutes.

A child under twelve years of age charged with any offence and not having been convicted of felony may be so dealt with.

Where parent or guardian of child apparently under the age of fourteen years represents that he is unable to control the child, he may be sent to industrial school.

Any child apparently under fourteen maintained in workhouse, etc., who is refractory, etc.

And under the Elementary Education Act, 1876, a

child, above the age of five years, habitually neglected by parents or habitually wandering or consorting with criminals or disorderly persons.

The order of justices is to specify the school, the religious persuasion, and time of detention, but the child cannot be detained beyond the age of sixteen.

Any child above ten escaping from an industrial school may be apprehended without warrant, and taken before a justice, and punished by imprisonment for not less than fourteen days or more than three months, and children can be similarly punished for neglecting or refusing to conform to the rules of the school.

Knowingly assisting or inducing a child to escape, or harbouring such child (or child placed on licence (*o*)), is punishable by fine or imprisonment.

Justices may order parents to contribute five shillings a week towards the maintenance of a child.

Inquests.

A coroner's inquest for the purpose of inquiring into and ascertaining the cause of death should be held in cases of death by violence or casualty, sudden death, death by suicide, and cases where persons are found dead, or where persons die in prison. An inquest is held upon view of the body (*supervisum corporis*), and it is necessary that the jury should view the body or human remains, the body itself being part of the evidence before the jury. It would appear that a coroner has power to exclude the public or individuals from the inquest if he thinks fit. See *Garnet* v. *Ferrand*, 6 B. & Cress. 611.

Coroners can admit to bail persons charged with manslaughter (50 & 51 Vict. c. 71, s. 5).

As to presence of prisoners at inquests, see title Coroner p. 118, *ante*.

Duty of police.—It is the duty of the constabulary, on hearing of any case of sudden or violent death, etc., to inquire into the circumstances immediately, and report the same to the coroner (*p*). It is for the coroner to decide

(*o*) Amendment Act, 57 & 58 Vict. c. 33, allowing supervision over discharged child till eighteen years of age.

(*p*) In absence or death of coroner two magistrates can hold inquest.

whether he considers it necessary to hold an inquest (*q*). Should he decide to do so, he issues his warrant or precept to the constable or other officer, who must, without loss of time, notify (*r*) twenty-four, or not less than twelve, housekeepers of the parish, precinct, or liberty. Persons may, if necessary, be summoned from different parishes. On no consideration are the jury to be of *kin to the deceased*, nor interested for any party charged or suspected in the cause of the death of the deceased.

Where dead bodies are found in the street, highway, etc., they should be examined and searched, and an inventory taken in the presence of some person of any property or papers found on them, which should be produced at the inquest. The constable should also produce any weapon or instrument found supposed to have been the means of death.

Under ordinary circumstances a body should not be moved from the place where it is found without the coroner's order, but this does not apply to bodies found in places open to public view. The police should obtain from the coroner an order for the burial of the body, which can be delivered to the friends of the deceased or to the parish authorities. Application should be made to the coroner for any expense the police have been put to, in sending for the coroner, and summoning the jury.

Intimidation.

Everyone commits a misdemeanor, and is liable to fine or imprisonment, who, with a view to compel any person to abstain from doing any act which he has a legal right to do, uses violence towards or intimidates him, or persistently follows such person, or follows him with others in a disorderly manner, or injures his property, or hides his

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(*q*) But a coroner has not an absolute right to hold an inquest in any case he chooses. To justify him he must have *reasonable ground* for believing that the death was caused by unnatural means. *R.* v. *Stephenson*, 53 L. J. 176; 49 J. P. 486. A coroner may be compelled to hold or re-open an inquest by *mandamus*.

(*r*) Constables are usually provided with a notice or summons book for the purpose, on the counterfoil of which they should enter particulars of time, service, etc., of notice.

tools, clothing, etc., or hinders him in use of his tools or property (Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86, s. 7). See also title TRADES UNIONS, *post*.

Juries.

By the Juries Act, 1870 (33 & 34 Vict. c. 77), the laws relating to the qualifications, summoning, and attendance of special and common juries have been amended. As to the qualifications of special jurors, see s. 6. Various classes of persons are exempted from serving on juries, including peers, members of parliament, judges, clergymen, Roman Catholic priests, ministers of any denomination whose place of meeting is duly registered, barristers-at-law actually practising, attorneys and solicitors actually practising, managing clerks and notaries public in actual practice, and many others. See Schedule to the Act.

The sheriff summons the jurymen and they are liable to a fine for non-attendance.

As to jurors in boroughs, see 45 & 46 Vict. c. 50, s. 186.

In criminal trials a jury consists of twelve men, who must agree in their verdict.

A grand jury may consist of any number more than eleven, and decide by a majority.

Juries in county courts consist of five men.

The Juries Detention Act, 1897 (60 & 61 Vict. c. 18), permits separation of juries in cases of Felony.

Justices.

Justices for counties are appointed by the Crown, usually on the recommendation of the Lord Lieutenant to the Lord Chancellor. The estate qualification (100*l*. per annum for freehold, etc.), is fixed by 18 Geo. 2, c. 20, s. 1. See also s. 13. The occupation qualification (*s*) (occupying for two years dwelling-house assessed to inhabited house duty at 100*l*.) is fixed by 38 & 39 Vict. c. 54.

The chairman of an urban or rural district council, unless a woman, shall be by virtue of office a justice for county in which the district is situated.

Justices for boroughs are appointed by the Crown. The Lord Chancellor sometimes adopts recommendation of town

(*s*) Such justices are not to act twelve months after they have ceased to have such qualification.

council, and at other times acts quite independently. A justice for a borough need not be a burgess nor have an estate qualification, as required by a justice for a county, but he must reside or have property which he occupies in or within seven miles of the borough (45 & 46 Vict. c. 50), s. 157. The mayor has precedence over other borough magistrates, but not over county justices at petty sessions (48 J. P. 20).

In any action against a justice for any act done in the execution of his duty, malice must be alleged. In all cases where justices refuse to do any act relating to the duties of their office, application may be made to the Court of Queen's Bench, calling on them to show cause why such act should not be done (11 & 12 Vict. c. 44). A justice cannot act judicially out of his own county or borough.

As to Summary Jurisdiction of Justices, see Summary Jurisdiction Acts, Appendix, *post*; also pp. 19, 20, *ante*.

Larceny.

Larceny at common law is defined as "the wrongful taking and carrying away of the personal goods of another from his possession with a felonious intent to convert them to one's own use."

Goods which are not personal chattels at common law have been made the subject of larceny by statute. These statutory provisions were consolidated by the Larceny Act, 1861 (24 & 25 Vict. c. 96.) See Appendix, *post*.

Larceny is either simple or accompanied by circumstances of aggravation (*t*).

Robbery (*u*), consists in the felonious taking of property from the person of another, or in his presence by violence, or putting him in fear.

Demanding with threats an exorbitant sum for services may be larceny.

The component parts of the offence of simple larceny are—(1.) The taking. (2.) The carrying away or asportation. (3.) The felonious intent.

(1.) **The taking.**—The taking may be actual or constructive; actual where the taking is by force or stealth; constructive where possession is obtained by some trick or artifice, provided the right of property is not

(*t*) The distinction between grand and petty larceny is now abolished.

(*u*) See s. 40 of the Larceny Act.

transferred from the owner, for if such right be transferred, the offence will not be larceny, but may be that of obtaining goods under false pretences. See title FALSE PRETENCES, *ante*.

(2.) **Asportation.**—With respect to the asportation or carrying away, removal, however slight, will be sufficient. Moving a parcel from one part to the other of a waggon; lifting plate out of a chest and placing it on the floor, etc.; drawing a pocket book out of a pocket above the top of the pocket, although it should then fall again into the pocket (*c*).

(3.) **The intent** (*d*).—As to the "felonious intent," it may be laid down as a general rule that the taking and carrying away is felonious when the goods are taken against the will of the owner, either in his absence or in a clandestine manner, or where possession is obtained by force or surprise, or by a trick or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods, and where the taker intends to deprive the owner of his entire interest permanently and not temporarily.

Larceny "by trick."—Where the owner obtains the goods with intention of stealing (*animo furandi*) by a trick or fraudulent expedient, and the owner did not intend to part with the right of property, a conversion of them to the party's own use will be larceny; but where the party parts with the property and ownership, and not merely the possession, by means of some trick or fraud, the offence, if the case be within the criminal law, will be that of obtaining goods by false pretences. It is sometimes difficult to decide whether the offence be larceny or the misdemeanor of obtaining goods by false pretences.

In the case of *R.* v. *Solomons* (*Times*, May 20th, 1890; 34 S. J. 490), A. opened a purse and appeared to drop 3*s*. into it, and asked B., a bystander, to give him one shilling for the three shillings and the purse, which B. did, but found shortly afterwards it contained only three halfpence, the C. C. R. held there was no larceny, B. having given away his property in the shilling, but that prisoner might have obtained it by false pretences.

(*c*) Any removal of the property from the person even a hair's breadth is sufficient (*R.* v. *Simpson*, 24 L. J. 7); and on an indictment for robbery the jury may convict of an assault with intent to rob (Larceny Act, s. 41).

The case of *R.* v. *Collins*, 33 L. J. 177, where it was held that if a person put his hand into the pocket of another with intent to steal what he can find, and the pocket is empty, he cannot be convicted of an attempt to steal, has been overruled by *R.* v. *Brown*, 24 Q. B. D. 357; 59 L. J. 47; and see *R.* v. *Ring*, 56 J. P. 552.

(*d*) When goods are once taken with a felonious intent, the offence cannot be purged by a restoration of them to the owners. *R.* v. *Lovell*, 50 L. J. 91; 45 J. P. 406.

Obtaining money by ring dropping, ringing the changes, etc., is larceny, as is also the obtaining of money by means of a mock auction, on pretence that the party had bid for the goods. *R.* v. *Magrath*, 21 L. T. 543.

In the case of *R.* v. *Hollis*, 48 J. P. 120, A. was convicted of obtaining money by the trick commonly known as "ringing the changes" (see p. 33), and the C. C. R. upheld the conviction.

In a case of what is commonly known as "welshing" (*y*), B. called out the odds on a race, received deposits, and gave betting tickets bearing his name, but disappeared amongst the crowd whilst the race was being run and altered his appearance by a loose coat. Upon being found he repudiated any knowledge of the bet, but dropped a lot of similar betting cards. The C. C. R. upheld a conviction. *R.* v. *Sharp*, *Times* Law Reports, p. 152.

Larceny "by finding."—In cases where goods are lost, and a person finding them converts them to his own use, believing that the owner cannot be found, he commits a larceny of the goods.

Railway servants are guilty of larceny if they appropriate to their own use property found in railway carriages. *R.* v. *Pierce*, 32 J. P. 433.

Misdelivery.—A person wrongfully appropriating to his own use goods, etc., delivered to him by mistake may be convicted of stealing them (*z*).

Larceny by servants.—Where a servant disposes of his master's property, which is under his charge, he is guilty of larceny, the possession of the servant being in law the possession of the master. An unauthorized gift by a servant of his master's goods will be a felony (26 & 27 Vict. c. 103). As to servant taking his master's corn without permission for master's horses, see p. 231.

Bailees.—Persons to whom goods are entrusted for a specific purpose, viz., to be conveyed, repaired, etc., are considered "bailees" of such goods. If the bailee converts

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(*y*) See case of *R.* v. *Buckmaster*, title BETTING, *ante*.

(*z*) In *R.* v. *Ashwell* (where a sovereign was given in mistake for a shilling, and appropriated), the court of fourteen judges were evenly divided on question of larceny (55 L. J. 65; 50 J. P. 184).

the same to his own use, etc., he is guilty of larceny. But a person cannot be convicted of larceny as a bailee, unless the bailment be to re-deliver the very same chattel, or money. Larceny Act, s. 3, and see *dicta* of CAVE, J., in *Re Bellencontre, Law Journal*, October 14th, 1893, p. 674.

Husband and wife.—By the common law, a wife cannot be convicted of stealing goods belonging to her husband, or to her husband and others, but this has been modified by recent legislation. See title MARRIED WOMEN'S PROPERTY ACT. If a married woman commits theft or other like offence in the company or by the coercion of her husband, she is not considered guilty. A married woman cannot be convicted as a receiver of stolen goods when the property has been taken by the husband and given to her by him (*R.* v. *Wardroper*, 29 L. J. 116); but, if jointly indicted, the wife may be found guilty as well as the husband, if the jury find that she acted independently of her husband, and not under his control. *R.* v. *Cohen*, 32 J. P. 565.

Stealing animals.—It is an offence (s. 10 of Act) to steal any horse, cow, sheep, etc.; or (s. 11), to kill with intent to steal same (*a*).

Animals "feræ naturæ" (of wild nature).—It is an offence under s. 21 of Act to steal any bird, beast, or other animal ordinarily kept in a state of confinement, or for any domestic purpose, not being the subject of larceny at common law, or wilfully kill same with intent to steal it.

The animals within the operation of this section, when in the state described, are bears, foxes, monkeys, apes, polecats, cats, ferrets, thrushes, singing birds in general, parrots, and squirrels (1st Rep. Crim. Law Com., p. 14), and others (probably kept for whim, pleasure, or profit) as badgers, hawks, herons, falcons, goats, and rooks, for all these are animals *feræ naturæ*, and although reclaimed do not serve for the food of man.

The offence of stealing rooks (*b*) from trees is not punishable either as larceny or by summary conviction, they being

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(*a*) A provision in the section exempts from its operation the killing of a dog, since by s. 18 the stealing of a dog is not a felony. See Larceny Act, *post*.

(*b*) As to taking wild birds during protected season, see title BIRDS, *ante*, p. 99.

animals *feræ naturæ*, and not protected by any particular statute, but proceedings under Malicious Injuries Act can be taken in cases where the trees are damaged.

Young partridges reared by a hen, and which still remain with the hen, are the subjects of larceny. *R.* v. *Shickle*, 32 J. P. 790. Dead game, before it is reduced into possession, is not the subject of larceny, and if a person picked up wounded game alive, but in a dying state, he is not guilty of larceny. *R.* v. *Roe*, 22 L. T. 415. If rabbits be caught by poachers, and placed by them in a ditch, and afterwards taken away by them, the offence is not larceny, the animals being *feræ naturæ*. *R.* v. *Townley*, 40 L. J. 144; 25 J. P. 723. See also *R.* v. *Read* and *R.* v. *Petch*, under title GAME, *ante*.

Dog stealing is an offence under s. 18 of Act, and a second offence is an indictable misdemeanor. See also s. 19 of Act as to possession of skin of stolen dog, etc.

Pigeons.—Killing or taking pigeons (*c*) unlawfully is an offence (s. 23).

Gas.—Defrauding a gas company of gas by fraudulently introducing pipe is larceny (*R.* v. *White*, 21 L. T. 159), as is the fraudulent abstraction of electricity (44 & 45 Vict. c. 56, s. 9).

Trees, shrubs, etc.—The stealing or destroying of trees, shrubs, etc., growing in parks, gardens, etc., or in any ground adjoining or belonging to any dwelling-house, if value exceed 1*l.*, is felony; if the trees, shrubs, etc., be growing elsewhere, if value exceed 5*l.*, is felony (s. 32).

The stealing, etc., of trees, shrubs, etc., wheresoever growing, to the value of 1*s.*, is an offence under s. 33, penalty 5*l.*; for second offence, imprisonment twelve months; third offence, felony.

The stealing, etc., of any plant, root, fruit, or vegetable production growing in gardens (*d*), etc., is an offence under s. 36; a second offence is felony.

The right to take apples on branches over-hanging the

(*c*) A conviction cannot be sustained where a farmer under claim of right kills a pigeon.

(*d*) As the stealing of fruit is not larceny at common law, if the stealing and carrying away form one act, it seems that stealing growing fruit from any other than the places specified in the section is not an offence at all (Stone's Justices' Manual).

offender's garden is a moot point. The cases are referred to in 32 J. P. 525.

The Court of Appeal decided in *Lemmon* v. *Webb*, 64 L. J. Ch. 205; 59 J. P. 564, that a land owner is entitled to cut off the branches of his neighbour's trees which overhang his land without previous notice to owner.

The stealing, etc., of cultivated roots or plants growing elsewhere than in gardens is an offence under s. 37 of Act, penalty 1*l.*; a second offence is punishable by imprisonment.

This section omits the word "fruit," so that it is doubtful whether it applies, unless the root or plant be stolen (32 J. P. 462). In *R.* v. *Brumby* it was held that stealing clover growing in a field and cut by the defendant was punishable under the corresponding clause of a previous statute as stealing a cultivated root (17 L. T. 261).

Mushrooms, watercress, flower-roots, and plants growing without cultivation are within this section. It is undecided whether if manure or salt be laid down to stimulate the growth of mushrooms they become cultivated plants. The question was raised in *R.* v. *Wallis*, 50 J. P. 281, but the case was decided upon a different issue.

Recent possession.—Possession of stolen property recently after its loss, if unexplained, is presumptive evidence that the party in possession stole it, but after the lapse of many months a person cannot be called to account for the manner in which the property came into his possession.

Indictment.—Several counts may be inserted in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, committed against the same person, within six months from the first to the last of such acts.

Venue.—*Trial may take place either in jurisdiction in which the larceny was committed, or in which the offender shall have in his possession the stolen property* (*s.* 114 *of Act*).

Receiving Stolen Goods.

This subject is treated of under ss. 91—95 of the Larceny Act; see also provisions of Prevention of Crimes Act, ss. 16, 19; also under title Evidence, Chap. VI., *ante*. The offence may either amount to a felony or a misdemeanor.

If a husband, knowing that his wife has stolen goods, receives them from her, he may be convicted as a receiver. *R.* v. *M'Athey*, 32 L. J. 35. If stolen goods be returned to the thief in order to detect the receiver, the receiver cannot be convicted, since they were not stolen property at the time he received them. *R.* v. *Hancock*, 38 L. T. 787; 42 J. P. 695.

Regarding restitution of stolen property, see title RESTITUTION, *post*.

Libel.

A libel consists of defamatory matter expressed either in printing, writing, signs, such as hanging in effigy or pictures, tending to blacken the character of one who is dead, or the reputation of one who is alive, and to expose him to public hatred, contempt, or ridicule. For such libels an indictment lies. The offence is a misdemeanor (*e*) triable at assizes. The offender is liable to two years' imprisonment (one year if he does not know of falsity), and to pay such fine as the court may direct (6 & 7 Vict. c. 96).

A libel may be "published" by delivering, reading, exhibiting, or otherwise communicating its purport to any other person than the one libelled.

Although a *bonâ fide* belief in the truth of the matter, and the existence of a legal moral or social duty to publish it, is a good defence at a subsequent stage of the proceedings, it forms no defence (except in the case of a libel published in a newspaper) in proceedings before justices (6 & 7 Vict. c. 96, s. 7).

A fair criticism upon persons who submit themselves or their work to public criticism, or a report of proceedings in Parliament or in courts of justice, does not come within the definition of libel.

By 8 & 9 Vict. c. 85, it is a misdemeanor to propose to abstain from or offer to prevent the printing or publishing any matter or thing touching any other person "with intent" to extort money or some other valuable. Punishment, three years' imprisonment.

Words spoken, however scurrilous, even though spoken

(*e*) To make a libel on the dead a crime there must be a vilifying of the dead with a view to injure his posterity. *R.* v. *Ensor*, L. J. N. C. 115.

personally to an individual, are not the subject of indictment unless they directly tend to a breach of the peace. Blasphemous publications, or publications which are immodest or immoral, are offences indictable as misdemeanors.

Newspaper Libel and Registration Act, 1881.

The Act (44 & 45 Vict. c. 60) requires that the fiat or allowance of the Director of Public Prosecutions in England or Her Majesty's Attorney-General in Ireland shall be had and obtained before any criminal prosecution can be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper, for any libel published therein (*f*).

Section 2 of Act enacts that reports of certain meetings shall be privileged if the report was fair and accurate, and published without malice and for the public benefit.

The section contains a proviso withdrawing protection afforded by section when the defendant refused to insert, in the newspaper in which the report complained of apeared, a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff or prosecutor.

Law of Libel Amendment Act, 1888.
(51 & 52 Vict. c. 64.)

No criminal prosecution shall be commenced against any proprietor, publisher, editor, etc., of a newspaper for libel, without the order of a judge (s. 8).

A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged (s. 3).

Newspaper reports of proceedings of public meetings and of certain bodies and persons are privileged (s. 4).

Licensing Acts.

The Licensing Acts regulate the sale of intoxicating liquors. The police are required to enforce their provisions,

(*f*) In *R.* v. *Yates*, Q. B. D., July 17th, 1883, several points of interest bearing on this section were raised. See 48 J. P. 113.

being authorized to enter on licensed premises at any time to prevent or detect offences.

Justices have for several centuries had surveillance over inns (*g*) and alehouses (5 & 6 Edw. 6). During the present century special Acts have been passed defining, controlling, and in some cases limiting these powers, but all persons who retail intoxicating liquors (wholesale dealers in spirits and wine merchants excepted) have now to obtain a certificate from the justices.

A full exposition of the licensing laws will be found in Patterson's Licensing Acts (*h*).

The principal statutes with which police are concerned are—

(1) The Alehouse Act (9 Geo. 4, c. 61), setting forth procedure *re* licensing.
(2) The Beerhouse Acts (*i*), relating to special licences for particular liquors.
(3) The Refreshment House Act of 1860.
(4) Beer Dealers' Wholesale and Retail Licences.
(5) The Licensing Acts of 1872 and 1874, containing the police law *re* sale and supervision.

An epitome of the more important of these Acts is given in the Appendix. The following is a summary of their provisions:—

1. Alehouse Act, 1828.

(Now known as the Intoxicating Liquor Licensing Act, 1828.)

Licences for the sale of intoxicating liquor by retail are issued annually by the Excise, but before an applicant can receive a licence he must first obtain a certificate (*j*) from the magistrates at their annual licensing

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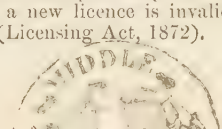
(*g*) An "inn" is defined as a place intended for passengers and wayfaring men. A "tavern" is not within this definition (47 J. P. 579). No one has a right to insist on being served in a tavern. *R.* v. *Rymer*, 41 J. P. 199. It is an indictable offence for an innkeeper to refuse to entertain a traveller (*R.* v. *Ivens*) without legal excuse, as for want of accommodation or unfitness of guest. *R.* v. *Rymer*, 46 J. P. 635. A refreshment bar attached to inn is not an "inn" within legal meaning of word.

(*h*) Published by Shaw & Sons, Fetter Lane, E.C.

(*i*) Including a number of statutes, of which the Wine and Beerhouse Act, 1869, is most important. See p. 204, *post*.

(*j*) The justices' discretion as to giving or refusing certificates is absolute, but must be exercised judicially and not capriciously. *Sharp* v. *Wakefield*. See p. 212, *post*. In counties a new licence is invalid till confirmed by standing committee of justices (Licensing Act, 1872).



sessions. These sessions are held in every county (*k*) and town between August 20th and September 14th, a petty sessions, to appoint time and place, being held twenty-one days previously. Notices are to be posted on doors of church, chapel, etc., and copies are to be served on justices and innkeepers. See also Procedure, Wine and Beerhouse Act, 1869, s. 7, *post*, p. 204.

The *majority* of justices present are to decide on all questions as to granting, withholding, etc., of licences.

Sections 20 to 28 of Act are repealed except as regards renewals and transfers.

Sections 4 and 5 of Act relate to transfer of licences, and s. 14 to fresh licences in case of death, etc.

Transfers, Provisional Licences, etc.

Justices shall at annual licensing sessions appoint special sessions for purposes of transfer of licences to persons intending to keep inns theretofore kept by other persons (Alehouse Act, 1828, ss. 4 and 5).

Applicants for "transfer" shall fourteen days prior to special sessions serve notice of intention to transfer upon overseer of parish and *on the superintendent of police of the district.*

The notice to be signed by applicant or his agent, and to set forth name of person to whom it is intended to transfer the licence, together with place of residence and trade or calling.

Temporary transfer.—At any petty sessions, *at any time* when no special sessions shall be holden for the place, the majority of justices present may authorize any person to whom it may be proposed to transfer or grant a licence to carry on the business of a licensed victualler at the same premises (Licensing Act, 1842 (5 & 6 Vict. c. 44), ss. 1—6).

Provisional licences for new premises.—A provisional grant of licence for new premises in course of construction may be made by justices if satisfied with the plans submitted to them of such house or premises, but such licence requires confirmation (Licensing Act, 1874, s. 22).

When an adjoining house is added to premises it is for the justices to determine whether it is substantially the same house or a new house. *R.* v. *Smith* (1866), 31 J. P. 259.

(*k*) Except in Middlesex and Surrey, where sessions are held during first ten days in March.

Licences lost or mislaid.—Justices may receive *a certified copy* of such licences (Licensing Act, 1872, s. 41).

Fresh licences on death, etc.—Justices may grant licence to heirs, executors, or administrators on certain conditions (Alehouse Act, 1828, s. 14).

Regarding "occasional licences," "exemptions," etc., see p. 210, *post*.

Renewals.

Where a licensed person applies for the renewal (*l*) of his licence, the following provisions shall have effect :—

1. He need not attend *in person* (*m*) at the general annual licensing meeting unless he is requested so to do.
2. The justices shall not entertain any objection to renewal unless written notice has been served stating the grounds on which such licence is to be opposed.
3. The justices shall not receive any evidence which is not given on oath (*n*).

Subject as aforesaid licences shall be renewed, and the powers and discretion of justices relative to such renewal

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(*l*) The discretion to grant or refuse must be exercised "judicially." See case of *Sharp* v. *Wakefield*, p. 212, *post*. The decision in that case does not affect the renewal or transfer of beerhouse licences granted before May 1st, 1869, the renewal of which can only be refused on one of the four grounds specified in s. 8 of the Wine and Beerhouse Act, 1869. See p. 204.

(*m*) The Master of the Rolls said, in *Sharp* v. *Wakefield*, that the licensee is only relieved from attending *in person*, and if he does not so attend he must attend by someone authorized to apply. It was held in *R.* v. *Farquhar* that renewal cannot be refused without giving notice to the applicant to attend and answer objections (39 J. P. 166 ; 9 Q. B. 258).

(*n*) In the case of *R.* v. *Merthyr Tydvil*, it was stated that the justices adjourned their meeting upon objections stated *by a constable* in the justices' private room. The Q. B. Division strongly condemned the justices for having private conversation with a police officer about a case on which they were to adjudicate (14 Q. B. D. 548 ; 49 J. P. 213). In a later case a rule for a *mandamus* was made absolute, there having been a private conference with the superintendent of police and no statement of grounds of refusal. *R.* v. *Bartlett*, 49 J. P. 772.

Where notice to attend was given, and no specific objection was made, but the *superintendent of police* proved on oath a conviction, and the justices afterwards called him into their private room and subsequently refused renewal without stating the reason, *mandamus* was granted, the court not being satisfied that justices had not been influenced by what had been said in private. *R.* v. *JJ. Redditch*, 50 J. P. 246.

The Master of the Rolls held, in the Appeal Court, it was as bad for justices to ask in open court as in a private room a question of a police constable affecting a licence under consideration, *if the parties had no*

shall be exercised as heretofore (Licensing Act, 1872, s. 42, as amended by Licensing Act, 1874, s. 26).

2. The Beerhouse Acts.

These comprise a group of statutes, including the Beer Act, 1830, with amending Act (3 & 4 Vict. c. 61), the Beerhouse Act, 1834, the Wine and Beerhouse Act, 1860 (sales in bottles by shopkeepers), and the Wine and Beerhouse Act, 1869.

The Beerhouse Act, 1834 (*o*), divided traders into two classes: those selling beer with licences for consumption *on the premises*, and those selling for consumption *off the premises*. These licences are usually referred to as "on" and "off" licences.

The Beerhouse Act, 1840, prescribed a "rating value" for premises, for which the Licensing Act, 1872, substituted an "annual value."

The Wine and Beerhouse Act, 1869 (amended by Act of 1870), brought under the control of justices certain licences, permitting shopkeepers to retail wine in bottles, previously granted by the excise under the Refreshment House Act, 1860 (*p*).

Section 7 of the Wine and Beerhouse Act, 1869, sets forth the procedure *re* applications for new licences, and is important.

Every person intending to apply for a certificate under the Act shall twenty-one days previously give notice in writing to overseers of parish or

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opportunity of questioning the constable on oath. *R.* v. *JJ. of Newcastle*, *Times*, February 3rd, 1877.

The unsworn statement of a *superintendent of police* had been heard by justices, and also the statement of the applicant, and it was urged that the justices had acted on a man's own admission in refusing the renewal. The Q. B. Division eventually decided that the renewal ought to have been granted, on the ground that notice of objection had not been given. Coleridge, L.C.J., commented strongly upon the justices having heard unsworn evidence from a person other than the applicant for the licence, as being in direct contravention of the statute. *R.* v. *JJ. of Exeter*. See note, Stone's Justices' Manual, pp. 402 and 404.

(*o*) Following 1 Will. 4, c. 64 (1830), which invaded the monopoly hitherto held by justices, and enabled householders on entering into a bond to obtain a licence. A "beershop" is a place where beer is sold, even if it is consumed off the premises.

(*p*) An abridgment of Act is given in Appendix. See also p. 205, *post*.

place, and to some constable or peace officer acting within such parish or place, setting forth his name and address and description of licence applied for and of situation of premises in question, and in case of premises not heretofore licensed the applicant shall within twenty-eight days before applying cause a like notice to be affixed and maintained on two consecutive Sundays on the door of such premises and on the doors of church or chapel in parish, or if there be no church or chapel, on some other public and conspicuous place.

The applicant is also required to insert advertisement in local newspaper.

Where the application is for *renewal only* notice is not required.

Under s. 8 of Act, justices could only refuse to grant certificates on certain grounds, but 45 & 46 Vict. c. 34, following 43 & 44 Vict. c. 6, s. 1 (*q*), now gives justices absolute discretion (*r*).

They must, however, give reasons for refusal if the application be under the Act of 1869. The licences can only be refused on one or more of the grounds mentioned in s. 8 of Act, viz. (1) unsatisfactory character of applicant; (2) disorderly character of house; (3) disqualification of applicant; (4) disqualification of house. Justices are bound to state on which of the four grounds they base their decision if they refuse to renew. *R.* v. *Thomas*, 40 W. R. 478.

3. Refreshment Houses.

Under the Refreshment Houses Act, 1860, no person can keep open a house for public refreshment, resort, and entertainment between 10 P.M. (Revenue Act, 1861) and 5 A.M., which is not licensed for the sale of beer, cider, wine, or spirits, without a licence.

No licence is required when a refreshment room in which no intoxicating liquor is sold is closed before 10 P.M.

For definition of "refreshment house," see 39 J. P. 418. A dining and concert room where beer is not sold, but merely procured, does not require a licence (*Taylor* v. *Oram*), but a "cafe," where persons sat down and took coffee and cigars, was held to be a place of refreshment. *Muir* v. *Keay* (Birmingham), 40 J. P. 120. A shop where persons drank lemonade at the counter has been held to be a refreshment house (*House* v. *Inland Revenue*, 41 J. P. 423), as was also a temperance hotel. *Kellaway* v. *Macdougall*, 45 J. P. 207.

Clubs.—A licence is not required for the dispensing of excisable articles under certain conditions amongst the

(*q*) See also Beer Dealers Retail Licences (Amendment) Act, 1882.

(*r*) See *Sharp* v. *Wakefield*, *post*, p. 212.

members of a *bonâ fide* club, but a club in which the manager is the proprietor, in which liquor is sold without accounts kept or statement submitted, is a "pretended club," and the manager may be convicted. See *Evans* v. *Hemingway* (1888), 52 J. P. 134. Other cases pertinent are *Bowyer* v. *Percy Supper Club* (1893), *Newman* v. *Jones* (1886), *Madin* v. *M'Lean*, 58 J. P. 247, *Graff* v. *Evans* (1881), *Stevens* v. *Wood* (1890).

Canteens.—Special regulations operate *re* sale of liquor in canteens. See Army Act, 1881, s. 174, and 43 J. P. 790.

Packet boats.—The Passage Vessel Licences Act, 1828, and other Acts, deal with sale of liquor in packet boats.

4. Wholesale and Retail Licences—Spirits, etc.

The Beer Dealers Retail Act, 1880 (43 Vict. c. 6) provides for issue of beer dealers' wholesale and retail licences.

The Amendment Act of 1882 (45 & 46 Vict. c. 34), enacts that—

Whereas it is expedient to extend the provisions of 43 Vict. c. 6 to the granting of certificates for all licences for the sale of beer by retail for consumption off the premises, it is enacted (s. 1) that (notwithstanding other enactments) justices shall be at liberty in their full and unqualified discretion either to refuse or grant certificates for any licences for sale of beer by retail to be consumed off the premises on any grounds appearing to them sufficient.

The provisions of above section are similar to those of 43 Vict. c. 6, except that they apply to *any* licence.

Certificates can be granted at general annual licensing meetings only (s. 2).

Wholesale spirit dealers are prohibited from selling by retail under any Inland Revenue licence (except in premises exclusively used for the sale of intoxicating liquor) without justices' licence authorizing same (Licensing Act, 1872, s. 68). As to sale of "Liquors," see Licensing Act, 1872, s. 69.

Sweets, or made wines, are to be construed to mean any liquor made from fruit and sugar mixed with any other material which has been fermented. A licence for the sale of "sweets" is granted in the same manner as if sweets were wine (Licensing Act, 1872, s. 94).

5. Licensing Acts, 1872 and 1874.

The Licensing Acts of 1872 and 1874 contain provisions regarding the supervision and control by police of licensed premises (*s*). An abridgment of the several sections of these Acts is given in Appendix.

A constable is authorized at all times to enter on licensed premises for the purpose of preventing or detecting offences (*t*).

Police should frequently inspect public-houses and beer-houses situated within their district, but they should carefully avoid remaining on premises longer than their duty actually requires them to do.

As to "gaming" on licensed premises, see p. 209, *post*.

The offences enumerated under Act of 1872, of which the police are specially required to take cognizance, are:—

Illicit sales, viz., selling without a licence, or elsewhere (*u*) than authorized by licence, or contrary to conditions of licence; selling spirits or liquor for consumption to young persons (under sixteen) or to children (under thirteen); selling by other than standard measure (ss. 3—8 of Act).

Drunkenness.—All persons "found" drunk on highway or licensed premises (*x*); drunk, disorderly, or riotous (*y*); drunk in charge of horse, etc., or with firearms, can be proceeded against (s. 12).

A constable is *not authorized to apprehend* a person who is merely found drunk, but any person is justified in taking care of a person who is drunk and incapable of taking care of himself. It is the practice in some places to take such persons to the police station till sober, and subsequently proceed against them by information and summons; but offenders are in some cases detained till usual time of petty sessions. The irregularity of detention is probably waived if no objection be made, but procedure by

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(*s*) "Premises" include every room, closet, cellar, yard, stable, outhouse, shed, or any other place whatsoever belonging or in any manner appertaining to such licensed house or place.

(*t*) A constable *bonâ fide* inspecting is entitled to admission, although he may not have any special grounds of suspicion. *R.* v. *Dobbin*, 48 J. P. 182.

(*u*) As to drinking liquor near door of public-house, see note to s. 5 Act of 1872, Appendix—case of *Bath* v. *White*.

(*x*) A licensed house is a private place after "closing hours." *Lester* v. *Torrens*, 41 J. P. 821.

(*y*) "Riotous" means noisy or turbulent conduct.

information and summons could be insisted on. The cases of *Blake* v *Beach* and *Codd* v. *Cabe*, 40 J. P., pp. 326 and 566, are applicable.

In the Metropolitan Police District a person found drunk and incapable is, by order of Commissioners, locked up and released when sober on his own recognizance, but some magistrates hold that this proceeding is illegal and refuse to adjudicate. 45 J. P. 599.

Refusing to quit.—Persons drunk or violent refusing to quit licensed premises on request, may be forcibly expelled (*z*) by a constable (s. 18).

Permitting drunkenness (*a*) on licensed premises, or violent or riotous conduct, or selling liquor to drunken person, renders offender liable to penalties (10*l.*) (s. 13).

An opinion will be found from the Home Office at 40 J. P. 380, that if justices are satisfied that a drunken person was not served with any liquor in the house where he was found, the keeper of the house ought not to be convicted.

The Surrey Quarter Sessions held on appeal that supplying liquor to persons who entered licensed premises in a state of drunkenness did not amount to permitting drunkenness "to take place on the premises." *Smith* v. *Eldridge*, 48 J. P. 25. The proper charge in such a case seems to be "*selling intoxicating liquor to a drunken person.*"

A female was found drunk in a taproom with beer before her. Landlord proved that entering his house there was nothing to show she was drunk. The Queen's Bench Division held justices were right in dismissing information. *Somerset* v. *Wade* (1894), 63 L. J. 126; 58 J. P. 231.

But for the offence of selling to drunken person a publican is liable, although the fact that the person was drunk was unknown to him or his servants. *Cundy* v. *Lecocq*, 53 L. J. 125; 13 Q. B. D. 207; 48 J. P. 599. It is only a ground for mitigation of punishment where he does not know or has not reasonable means of knowing person served is drunk.

Sections 14 and 15 provide penalties for the keeping of disorderly house or brothel (*b*).

Section 16 of Act deals with offence of "harbouring" or supplying liquor to constable on duty (*c*).

(*z*) A constable is not authorized to arrest the offender *whilst on the premises.*

(*a*) Under this section a publican cannot be convicted for being drunk on his own premises. *Warden* v. *Tyc*, 41 J. P. 120.

(*b*) Cases referred to at 22 J. P. 816, establish that prostitutes are entitled to refreshments like other people. The ingredients in offence are (1) allowing premises to be the *habitual* resort of prostitutes, and (2) allowing them to remain longer than necessary for reasonable refreshment. See also title WOMEN AND GIRLS, *post.*

(*c*) See *Mullins* v. *Collins*, 38 J. P. 84; also *Sherras* v. *De Rutzen* (1895), 64 L. J. 218; 1 Q. B. 918; 59 J. P. 290, in which case the conviction was quashed, the publican acting under a *bonâ fide* belief that the constable was not on duty.

Under s. 17 any person permitting "gaming" on licensed premises, or permitting premises to be used as a betting house, is liable to a penalty of 10*l.*; second offence, 20*l.* See GAMING ON LICENSED PREMISES, p. 174, *post*.

CLOSING HOURS, EXEMPTIONS, ETC.

Closing hours.—Section 24, Act of 1872 is repealed by s. 33 of Act of 1874, its provisions being re-enacted in amended form by s. 3 of that Act.

"Closing hours" (outside Metropolitan district) are—week days 10 P.M.; in "populous places" 11 P.M. (*d*); premises can open at 6 A.M. (*e*).

On Sundays, Good Friday, and Christmas Day, premises can remain open from 12.30 A.M. to 2.30 P.M., and from 6 till 10 P.M.

Section 27 of Act places refreshment-houses under same restrictions as inns *re* "closing."

To establish a charge of "keeping open," there should be evidence that the outer door was either open or ajar, or that some one was ready to open it when tapped at or other notice given by customer. *Jefferson* v. *Richardson*, 35 J. P. 470.

If the doors be shut and liquor be seen, the offence charged should be that of selling, and if persons are found sitting in the house with ale in glasses a sale will be presumed, and the magistrates justified in convicting in absence of disproving evidence. *Tennant* v. *Cumberland*, 23 J. P. 51.

Any person found (*f*) on licensed premises during closing hours (inmates, lodgers, and travellers (*g*) excepted) are liable to penalties. A constable can demand name and address of such persons, and may require evidence of correctness of same. Offenders failing to give required information may be apprehended (s. 25).

Private friends.—A publican is not liable to penalty for entertaining

(*d*) As to definition of "populous place," see DEFINITIONS, p. 211, *post*.

(*e*) Legal time is Greenwich mean time (43 & 44 Vict. c. 9).

(*f*) The person must be "found" on premises, it will not be sufficient to show that he was seen to leave the premises, unless there be some evidence otherwise criminating. In *Thomas* v. *Powell*, P. was seen to go into licensed premises and in three minutes to come out with a bottle of gin. Queen's Bench Division held facts proved equivalent to "being found" or ascertained to be on licensed premises. 57 J. P. 329.

(*g*) There is no definition in Act of word "traveller;" much controversy has arisen thereon. See case of *Penn* v. *Alexander*, article BONA FIDE TRAVELLER, p. 213, *post*. As to refusal of innkeeper to entertain traveller, see note, p. 201, *ante*.

(*bona fide*) private friends after closing hours, but he cannot convert his customers into "friends" for purpose of evading statute. *Corbett* v. *Haigh*, 44 J. P. 39. A licensed person is liable if he permit his friends to play at cards for money. *Osborne* v. *Hare*, 40 J. P. 759.

Exemptions.—A local authority (*h*) may exempt licensed premises from "closing" provisions where it appears desirable to keep same open for accommodation of persons attending markets, etc. (*i*), in neighbourhood. Notice of order has to be affixed to premises.

Occasional (exemption) licences.—An order may be made by the local authority, under s. 29, Act of 1872, exempting a duly licensed person *on any special occasion* (*j*) *or occasions* from provisions of Act as to closing.

Occasional (excise) licence (*k*).—The Excise authorities may, with consent in writing of two justices (now one justice—Revenue Act, 1863) grant to any duly licensed person an "occasional licence" to sell liquor *at any place* other than that for which licensed, for not exceeding three consecutive days (now six days), if it be conducive to public convenience, comfort, and good order—premises to be closed at 10 at night (Licensing Act, 1874, s. 19)—and on the occasion of any public dinner (*l*) or ball, premises may be kept open to any hour authorized by justices. The licences must be produced to police on demand.

Races and fairs.—Persons selling at races and fairs without "occasional" licence are liable to penalties (Licensing Act, 1874, s. 18).

Regarding "early closing licences," "additional licences," "six day licences," etc., see ss. 7 and 31, Act of 1874 and s. 49, Act of 1872 (Appendix, *post*).

(*h*) The "local authority" (outside London and Metropolitan district) is defined as two justices of the peace in petty sessions assembled.

(*i*) Exemption in neighbourhood of theatres is repealed.

(*j*) The Queen's Bench Division held, in *Devine* v. *Keeling*, that it was for the justices to determine what was a "special occasion" in their own locality. 50 J. P. 551.

(*k*) These licences admit of sale in booth, tent, etc., at fairs, races, or the like.

(*l*) An opinion is given at 55 J. P. 443, that a club dinner is not a public dinner.

Section 11, Act of 1874, relates to power of closing "night houses."

Closing in case of riot.—Any two justices may close licensed premises—by force if necessary—in the event of any riot or tumult or anticipated riot or tumult (s. 28 (1872)).

Wales.—The Sunday Closing (Wales) Act, 1881, and other statutes deal with closing of houses during Sunday in Wales.

Miscellaneous Provisions.

A register of licences is to be kept and open to inspection.

Search warrant.—Police can (under s. 17, Act of 1874) obtain a search warrant to search for and seize liquor kept contrary to law.

Evidence of sale—In proving sale or consumption of liquor it shall not be necessary to show that money *actually passed* or liquor was *actually consumed*, if the court be satisfied that a transaction of the nature complained of actually took place (s. 62).

As to "billiard licences" (s. 75), see title Billiards, p. 98, *ante*.

Definitions.

"*Intoxicating liquor*" means spirits, wine, beer (*m*), porter, cider, perry, and sweets, and any fermented, distilled, or spirituous liquor which cannot legally be sold without a licence from the Inland Revenue (s. 74).

"*Populous place*" means any area with a population of *not* less than one thousand, which by reason of the density of such population the county licensing committee may by order determine to be a populous place. The same section defines "Town," (*n*) (s. 32 Act of 1874).

There is no definition of word "Traveller" in Act. See note (*g*), p. 209, *ante*.

(*m*) Botanic beer made without hops is not within the Act. *Leah* v. *Minnes*, 47 J. P. 148.

(*n*) The section defines "new licences" and "occasional licences."

As to distinction drawn between "inn" and "tavern," see note (*g*), p. 201, *ante*.

Re "Licensed premises," see p. 207, *ante*.

SHARP *v.* WAKEFIELD, H. L. (1891); 60 L. J. 73; 55 J. P. 197.

The decision of the House of Lords in the case of *Sharp* v. *Wakefield*, March 20th, 1891, gave rise to an impression that an alteration in the licensing law had been effected. This, however, was not so. The judges dealt with the case under existing Acts and affirmed the decision of the Court of Appeal.

Lord HERSCHELL, in his judgment, thus epitomized the case as presented to the House :—

"The sole question for decision in this case is—whether, where a licence is applied for by way of renewal by one who already holds a licence for the sale of intoxicating liquors, the licensing authorities are entitled to take into consideration the wants of the neighbourhood, and the remoteness of the premises from police supervision, or whether their inquiry must be limited to the character and conduct of the applicant, and they can only refuse the applicant on the ground of his personal unfitness."

The judgments delivered in the House of Lords supported the judgment in the Court of Appeal, which held that the provisions of s. 42 of the Act of 1872, as amended by s. 26 of the Act of 1874, are mere conditions precedent to the exercise of jurisdiction, and do not in any way limit the absolute judicial discretion of the justices, but modify the procedure only, and the justices were entitled to refuse the renewal of the licence applied for, although no misconduct on the part of the applicant was proved.

No alteration in the law has been made, but the decision establishes beyond dispute that justices are entitled to consider, when renewing licences, *the wants of the neighbourhood, as apart from the personal conduct of the applicant* for the renewal; and justices have the same absolute judicial discretion to renew or refuse to renew the licence of a fully-licensed house, as they have of granting or refusing an application for a new licence. *Sharp* v. *Wakefield*, 22 Q. B. 239; 53 J. P. 20; 58 L. J. 57.

The Queen's Bench Division has, however, held that giving justices absolute discretion did not mean absolute discretion to do just what they pleased, but a judicial discretion (*o*) which could be maintained in a court of law to

(*o*) The discretion must be exercised judicially, that is to say, "according to the rules of reason and justice and not to private opinion," and it must not be "arbitrary, vague, and fanciful, but legal and regular." *Sharpe* v. *Wakefield*, 22 Q. B. 239. See Stone's Justices' Manual, p. 397.

have been exercised upon legal grounds after legal hearing and investigation (*p*). *R.* v. *Howard*, 53 J. P. 454.

BOULTER *v.* JJ. KENT, HOUSE OF LORDS, JULY 26TH, 1897.

(*Costs—Appeal from Licensing Sessions.*)

In this case the decision of the Court of Appeal [1896] (2 Q. B. D. 306) was reversed, and appeal allowed with costs. The appellant was held not to be a party under s. 31 of Summary Jurisdiction Act, 1879, the Act being inapplicable to the decisions of licensing meetings.

BONA FIDE TRAVELLER.

By s. 25 of the Licensing Act, 1872, any person found on licensed premises during closing hours—inmates, lodgers, and *travellers* excepted—are liable to penalties.

Much litigation has arisen with respect to this section.

There is no definition of the word "traveller," and it is difficult to give one. The section of Act requires that a person to be deemed a traveller must have lodged during the preceding night at least three miles distant, but that is only one *essential*. It has been decided that persons taking a drive or walk for business or pleasure, even for a short *distance*, were travellers, but not if the journey were undertaken "merely *because they desired to go to a* public-house and obtain drink." ERLE, C.J., in *Taylor* v. *Humphries*. See *Atkinson* v. *Sellers*, 28 L. J. 12; 23 J. P. 71; *Taylor* v. *Humphries*, 34 L. J. 1; 13 W. R. 136; *Peache* v. *Coleman*, 1 L. R. C. P. 134: 35 L. J. 118; and *Peplow* v. *Richardson*, 4 L. R. C. P. 168; 33 J. P. 407.

The doubts, however, which existed appear to a great extent to have been set at rest by the decision in *Penn* v. *Alexander*, a case heard in 1893, known as the Little Houghton case, the facts of which were as follows:—

About 130 men walked from Northampton on a Sunday evening to Little Houghton, distant three miles and a half, and were served with beer on tables set out in a yard for that purpose. No one was served with more than a pint, nor without being asked where he came from. The justices found as a fact that the men walked to Little Houghton solely to get beer, and were not *bonâ fide* travellers. COLERIDGE, L.J.C., and CAVE, J., differed, and the case was re-heard before a court of five judges, sitting as a divisional court for the purpose. The conviction was affirmed, CAVE, J.,

(*p*) See also *Jones* v. *Goodman*, *Times*, January 26th, 1889.

dissenting. *Penn* v. *Alexander*, 1 Q. B. 522; 41 W. R. 392; 62 L. J. 65; 68 L. T. 355; 57 J. P. 118; Treat. 131.

A recent case, however, exists which does not seem to have been referred to in the above judgment—the case of *R.* v. *Cowan*. A railway porter on a Sunday morning, after attending to his work, distant between two and three miles from where he slept the previous night, extended his walk to a beerhouse more than three miles from his house, and had beer and bread and cheese for breakfast, and told a police officer who found him in the house that he had come for a "walk and a drink." The Queen's Bench Division held he was a *bonâ fide* traveller, and not the less a traveller because he walked beyond the place of his employment (*q*) to get beer at the inn. *R.* v. *Cowan* (*Times*, November 4th, 1892); *Cowap* v. *Atherton*, [1893] 1 Q. B. 49; 68 L. T. 88; 56 J. P. 725.

As to the precautions which landlords must take to satisfy themselves as to the *bonâ fides* of their guest the matter remains still in doubt.

No distinct rule can be laid down. Justices must judge from all the circumstances whether an innkeeper took all reasonable caution to ascertain whether the purchaser was a *bonâ fide* traveller.

It could scarcely be maintained in doubtful cases that merely asking the question was sufficient.

As to the *onus probandi*, see Stone's Justice Manual, 29th Ed. p. 455, from which the following is an extract:—

"The *burden* of proof as to the person not being a traveller was under Licensing Act, 1872, s. 51, sub-s. (4), upon the *defendant*. The sub-section is, however, repealed by Summary Jurisdiction Act, 1884, Sched. Unless this proof is still thrown upon the defendant by implication (see Licensing Act, 1874, s. 10) it will be incumbent on the prosecutor to prove the persons are not travellers."

Light Locomotives.

By the Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), certain enactments (see schedule to Act) restricting the use of locomotives on highways, shall not

(*q*) But a neighbour walking about the town for his own recreation and amusement is not a traveller. *R.* v. *Rymer*, 41 J. P. 199; 46 L. J. 110.

apply to any vehicle propelled by mechanical power if it is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (maximum weight with locomotives four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause; vehicles so exempted are referred to as light locomotives.

Provided that—

(a) the council of any county or county borough can make byelaws restricting the use of locomotives upon bridges:

(b) a light locomotive shall be deemed to be a carriage, and the law relating to carriages shall apply accordingly.

(2.) In calculating the weight of a vehicle unladen, the weight of any water, fuel, or accumulators, used for the purpose of propulsion, shall not be included.

Section 2. During the period between one hour after after sunset and one hour before sunrise, the person in charge of a light locomotive shall carry attached thereto a lamp so constructed and placed as to exhibit a light in accordance with the regulations to be made by the Local Government Board (*r*).

Section 3. Every light locomotive shall carry a bell or other instrument capable of giving audible and sufficient warning of the approach or position of the carriage.

Section 4. No light locomotive shall travel along a public highway at a greater speed than fourteen miles an hour, or than any less speed that may be prescribed by regulations of the Local Government Board (*s*).

Section 5. The keeping and use of petroleum or of any other inflammable liquid or fuel for the purpose of light locomotives shall be subject to regulations made by a Secretary of State, and regulations so made shall have effect notwithstanding anything in the Petroleum Acts, 1871 to 1881 (*t*).

Section 6.—(1.) The Local Government Board may make regulations with respect to the use of light locomotives.

(2.) Regulations may be of a local nature and limited to a particular area, and may, on application of local authority,

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(*r*) See Article II. (9), *post.*

(*s*) See Article IV. (2), *post.*

(*t*) See PETROLEUM, *post.*

prohibit or restrict the use of locomotives for purposes of traction in crowded streets.

Section 7. A breach of any byelaw or regulation may be punished by fine of ten pounds.

Section 8. There shall be paid for every light locomotive, which is liable to duty as a carriage under the Customs and Inland Revenue Act, 1888, an additional duty of excise at the following rate; namely,—

	£	s.	d.
If the weight of locomotive exceeds one ton, but does not exceed two tons -	2	2	0
If weight exceeds two tons - - -	3	3	0

Section 9. The requirements of sub-section (4) of section twenty-eight of the Highways and Locomotives Amendment Act, 1878, may be from time to time varied by order of the Local Government Board.

Section 10. In the application of this Act to Scotland a reference to the Secretary for Scotland shall be substituted for a reference to the Local Government Board.

Regulations of Local Government Board.

The following regulations were made under s. 6 of Act, and issued November 9th, 1896, with a Circular Letter thereon:

Article I.—The expression "carriage" includes waggon, cart, or other vehicle.

The expression "horse" includes a mule or other beast of burden.

The expression "cattle" includes sheep.

The expression "light locomotive" means a vehicle propelled by mechanical power, which is under *three tons* in weight unladen, and is not used for the purpose of drawing more than one vehicle (maximum weight with locomotive four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause.

In calculating the weight of a vehicle unladen, the weight of any water, fuel, or accumulators used for the purpose of propulsion shall not be included.

Article II.—No person shall cause or permit a light locomotive to be used on any highway, or drive or have charge of same unless—

(1.) The locomotive (if exceeding five hundredweight) can be so worked that it may travel either forwards or backwards.

(2.) The locomotive shall not exceed six and a half feet in width.

(3.) The tyre of each wheel shall be smooth, and shall be flat and of the width following, namely,—

(a) if weight of locomotive unladen exceeds fifteen hundredweight, but does not exceed one ton, not less than two and a half inches ;

(b) if weight exceeds one ton, but does not exceed two tons, not less than three inches ;

(c) if weight exceeds two tons, not less than four inches ;

Proviso—Where a pneumatic or other tyre of soft and elastic material is used, the tyre may be round or curved, and may have projections or bosses of similar material rising above the surface of the tyre. The width of such tyre to mean the extreme width on rim of wheel when not subject to pressure.

(4.) The light locomotive shall have two independent brakes, which, when applied, shall prevent two of its wheels on same axle from revolving.

Provided that, in *the case of a bicycle*, this regulation shall apply as if, instead of two wheels on the same axle, one wheel was therein referred to.

(5.) The light locomotive shall be so constructed as to admit of its being at all times under such control as not to cause undue interference with passenger or other traffic on any highway.

(6.) In the case of a light locomotive constructed to draw another vehicle, or used for the carriage of goods, the name and residence of owner and (if over one and a half tons) the weight of the locomotive shall be conspicuously painted thereon in letters one inch in height.

(7.) The light locomotive and all the fittings thereof shall be in such condition as shall prevent risk of danger to persons on highway or on locomotives.

(8.) The locomotive shall be under the charge of a person competent to control and direct its movement.

(9.) A lamp shall be carried (in pursuance of section two of Act) so constructed and placed as to exhibit,

between one hour after sunset and one hour before sunrise, a white light visible in the direction towards which the light locomotive is proceeding, and a red light visible in the reverse direction. The lamp shall be placed on the extreme right or off side of the light locomotive.

Provided that this regulation shall not extend to any bicycle, tricycle, or other machine to which section 85 *of the Local Government Act,* 1888, *applies.*

Article III.—No person shall cause or permit a light locomotive to be used on any highway for the purpose of drawing any vehicle unless the conditions here set forth shall be complied with.

(1.) Regulations (2), (3), (5), and (7) of Article II. shall apply as if the vehicle drawn by the light locomotive was therein referred to instead of the locomotive itself, and Regulation (6) of the Article shall apply as if such vehicle was a light locomotive constructed for the carriage of goods.

(2.) The vehicle drawn by the light locomotive, except where the locomotive travels at a rate not exceeding four miles an hour, shall have a brake in good working order, as required by such section (Article II., sub-s. (4)).

(3.) The vehicle drawn by the light locomotive shall, when a brake is required to be attached, carry upon the vehicle a person competent to apply efficiently the brake, with *proviso* to meet cases where brakes can be worked from the light locomotive itself.

Article IV.—Every person driving or in charge of a light locomotive when used on any highway shall comply with the regulations hereinafter set forth; namely,—

(1.) He shall not drive the light locomotive at any speed greater than is reasonable and proper having regard to the traffic, or so as to endanger life or limb, or to the common danger of passengers.

(2.) He shall not under any circumstances drive the light locomotive at a greater speed than *twelve miles an hour.* If the weight unladen of the light locomotive is one and a half tons and under two tons the speed shall not exceed *eight miles an hour,* and

if weight exceed two tons speed to be not more than *five miles an hour.*

If the light locomotive (whatever be its weight) be used on any highway to draw any vehicle, the speed shall not be greater than six miles an hour.

This regulation to have effect for six months from date of order.

[The Board are aware that experience may render it desirable that modifications should be made in the rules on this subject, and they have accordingly provided that Regulation (2) of Article IV. shall only have effect for six months from the date of the order, and thereafter until they otherwise direct.—Circular Letter, November 10th, 1896.]

(3.) The driver shall not cause the light locomotive to travel backwards further than may be requisite for purposes of safety.

(4.) He shall not negligently or wilfully cause hurt or damage to any person, carriage, horse, or cattle, or goods conveyed on any highway, or, when on locomotive, be in such a position that he cannot control same, nor shall he quit the light locomotive without having taken due precautions against its being started in his absence, or allow same or any vehicle drawn thereby to cause obstruction to highway.

(5.) He shall, when meeting any carriage, horse, or cattle, keep the locomotive on the left or near side of the road, and when passing same (proceeding in the same direction) keep on the right or off side of road.

(6.) He shall not hinder or interrupt free passage on any highway, and shall keep the locomotive (and vehicle drawn thereby) on the left or near side of the road to allow such passage.

(7.) He shall, whenever necessary, by sounding the bell or other instrument (required by section 3 of Act), give audible and sufficient warning of the approach or position of the locomotive.

(8.) He shall, on the request of any police constable, or of any person having charge of a restive horse, or on any such constable or person putting up his

hand as a signal for that purpose, cause the light locomotive to stop and to remain stationary so long as may be reasonably necessary.

Article V.—Whether the light locomotive be one to which Regulation (6) of Article II. applies or otherwise, the person driving or in charge thereof shall, if required, give to any constable or other person reasonably requiring it, his name and address and name and address of owner.

Local Government Act, 1888.

The Local Government Act (51 & 52 Vict. c. 41) divides England and Wales into 122 areas of local government, consisting of an equal number of "administrative counties" and "county boroughs." See Schedule III. of Act.

The Act provides for the appointment of county councils, and contains important provisions affecting the administration of the police. Subject to a special proviso *re* the powers and duties of justices as conservators of the peace, all the powers and duties of quarter sessions, or of justices out of session with respect to county police, are transferred to the standing joint committee, which is to be appointed in each county, and is to consist of an equal number of members taken from the quarter sessions and from the county council.

Before the passing of this Act the quarter sessions appointed the chief constable, and he appointed the police for the county, but for police purposes, "county" meant a county, riding, or division having a separate court of quarter sessions.

In a municipal borough the police were under the control of the watch committee of the borough council, though a borough might consolidate its police with the county force, and where the population of the borough was less than 5,000 the consolidation was in effect compulsory.

Under this Act the police force in all boroughs, with a population of less than 10,000 is merged in that of the county, and will be under the control of the standing joint committee for the county.

The principal powers and duties which are transferred to the county council from the quarter sessions or the justices out of session are as follows:—

The powers of quarter sessions in making any county

police or other rate, and of borrowing money, and of passing the accounts of the county treasurer; the maintenance of shire halls, county buildings, police stations, etc., the maintenance of or contribution to pauper lunatic asylums, and reformatory and industrial schools; the maintenance of county bridges and roads repairable therewith, and the powers of the county authority under the Highways and Locomotives (Amendment) Act, 1878; the appointment and determination of the salaries of, or the fees to be paid to, public analysts, inspectors, and other county officers; the powers of the local authority under the Contagious Diseases (Animals) Acts, the Destructive Insects Act, the Factory Acts, the Wild Birds Protection Act, the Weights and Measures Act, and under the Riot (Damages) Act, 1886; the powers of justices out of sessions in respect of the licensing of places for public performance of stage plays, and their powers as local authority under the Explosives Act, 1875.

Therefore, it will be noticed that there has been merely a transfer of existing powers, and no creation of new powers. Important changes have, however, been made with respect to the maintenance of main roads, in the appointment of coroners and of medical officers of health. (Extract Ryde and Thomas on Local Government, p. xxxix.).

County Council.

The council of a county is to consist of a chairman, aldermen, and councillors. The council and the members shall be constituted, elected, and conduct their proceedings in like manner, and be in the like position in all respects as the council of a borough divided into wards, subject to special provisions of the Act (s. 2).

Section 9 of the Act enacts the powers, duties and liabilities of quarter sessions, and of justices out of session, with respect to the county police, which shall on and after the appointed day vest in and attach to the quarter sessions, and the county council jointly, and be exercised and discharged through the standing joint committee (*u*) of the quarter session and county council appointed as hereinafter mentioned.

Provided that the powers conferred by s. 7 of the County and Borough Police Act, 1856, which requires constables to perform, in addition to their ordinary duties, such duties connected with the police as the quarter sessions may direct or require, shall continue to be exercised by the quarter sessions, as well as by the said standing joint committee, and may also be

(*u*) Standing joint committees are not appointed in County Boroughs. A moiety of cost of police (pay and clothing) is annually defrayable by government subject to certificate of efficiency (p. 1).

exercised by the county council, and the said section shall be construed as if the county council and the standing joint committee were therein mentioned, as well as the quarter sessions.

Nothing in this Act shall affect the powers, duties, and liabilities of justices of the peace as conservators of the peace, or the obligations of the chief constable, or the constables to obey their lawful orders given in that behalf.

Standing Joint Committee.

Section 30 enacts:—For purposes of the police, clerk of the peace, clerks to justices and joint officers, and other matters required to be determined jointly by the quarter session and the council of a county, there shall be a standing joint committee of the quarter sessions and the county council, consisting of such equal number of justices appointed by the quarter sessions, and of members of the county council appointed by that council as may from time to time be arranged between the quarter sessions and the council, and in default of arrangement, such number taken equally from the quarter sessions and the council as may be directed by a Secretary of State.

The joint committee shall elect a chairman, and in case of an equality of votes for two or more persons as chairman, one of those persons shall be elected by lot.

[*Under 2 & 3 Vict. c. 93, s. 17, the chief constable is required to attend every quarter sessions of the justices of the county, and to make quarterly reports to the justices of all matters which they shall require. Reports are now made to the standing joint committee and to the quarter sessions.*]

Any matter arising under this Act with respect to the police, or to the clerk of the peace, or clerks to justices, or to officers who serve both the quarter sessions or justices and the county council, or to the provision of accommodation for the quarter sessions, or justices out of sessions or to the use by them or the police or the said clerks of any buildings, rooms, or premises, or to the application of the Local Stamp Act, 1869, any sums received by clerks to justices or with respect to anything incidental to the above mentioned matters, and any other matter requiring to be determined jointly by the quarter sessions and county council, shall be referred to and determined by the joint committee under this section, and all such expenditure as the said joint committee determine to be required for the purposes of the matters above mentioned in this section shall be paid out of the county fund, and the council of the county shall provide for such payment accordingly.

Lotteries.

By 42 Geo. 3, c. 119, lotteries are deemed to be public nuisances, and keepers and players may be indicted. Penalty, 500*l*. A person knowingly suffering a lottery to be exercised in his house is liable, in addition to the pecuniary penalty, to be punished as a rogue and vagabond under the then Act of 17 Geo. 2, c. 5. Justices have no summary jurisdiction for the recovery of *pecuniary* penalties under

42 Geo. 3, c. 119. Since 46 Geo. 3, c. 148, s. 59, enacts that pecuniary penalties under the Act are to go to the Crown, and are to be sued for in the name of the Attorney-General (see *R.* v. *Tuddenham*, 10 L. J. 163); but this case does not affect the prosecution of a person as a rogue and vagabond, inasmuch as the present Act (5 Geo. 4, c. 83), which repeals 17 Geo. 2, c. 5, provides (in s. 21) for the prosecution of persons liable to be punished as "rogues and vagabonds."

Lotteries are described as any game, lottery, or little-go, not authorized by law, exposed to be played, drawn, etc., either by dice, lots, cards, balls, or by numbers or figures, or by any other contrivance or device. 8 & 9 Vict. c. 109, and 37 Vict. c. 15, prohibit the advertising of lotteries, etc. Persons connected with "art unions" are protected from penalties under 9 & 10 Vict. c. 48, on complying with provisions of statute.

Lunatics.

The Lunacy Act, 1890 (53 Vict. c. 5), contains three hundred and forty-two sections, and can only be briefly referred to as far as its provisions affect the police.

Lunatics are divided into three classes:—(1.) Private lunatics, including those so found by inquisition and all who are not paupers. (2.) Pauper lunatics who are generally maintained at the cost of their parish or county. (3.) Criminal lunatics, those detained in the custody of the law. The Lunacy Act, 1890, was amended by the Lunacy Act, 1891 (54 & 55 Vict. c. 65).

Under s. 13 (1) of the principal Act, a constable, relieving officer, or overseer of a parish is required within three days after obtaining knowledge that any person within the district or parish, who is *not a pauper and not wandering at large*, is deemed to be a lunatic and not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him; to give information thereof upon oath to a justice being a *judicial authority* under the Act as defined by ss. 9 and 10, Act of 1890, and by sub-s. (3), the constable, relieving officer, or overseer, upon whose information an order has been made, *or any constable whom the justice may require to do so* shall forthwith convey the lunatic to the institution named in the order, but the latter sub-section has been modified

by s. 2 (1) of the Act of 1891, which allows a constable relieving officer or overseer, whose duty it is, under the principal Act, to convey a lunatic *to or from* an institution for lunatics, to make proper arrangements for the performance of the duty by some other person. Under s. 15 (1) persons (whether pauper or not) wandering at large who are deemed to be lunatics are to be apprehended and taken before a justice. If a constable, etc., is satisfied that it is necessary for the public safety or the welfare of an alleged lunatic that he should be placed under care and control, the constable, etc., may remove alleged lunatic to workhouse, but he is not to be detained there for more than three days, before which time the proceedings required by the Act are to be taken (s. 20, Lunacy Act, 1890, 53 Vict. c. 5).

Section 2 of the Criminal Lunatics Act, 1838 (1 & 2 Vict. c. 14), requires a constable or overseers under order of justices to convey to a county asylum, hospital or licensed house, any insane person or dangerous idiot who has been apprehended under circumstances denoting a purpose of committing an indictable offence. By s. 285 (1) of the principal Act, it is provided than whenever a justice directs a lunatic or alleged lunatic, whether *a pauper or not*, to be examined, etc., the justice directing the examination, or any other justice having jurisdiction in the place where the examination took place, may make an order upon the guardians for, *inter alia*, payment of such reasonable expenses of carrying the order into effect as the justice thinks proper.

Escape and recapture.—A lunatic having escaped from an asylum, etc., can be retaken at any time within fourteen days after his escape; after that time a fresh order and certificate must be obtained before he can be received at the asylum (ss. 85 and 89). Section 11 Criminal Lunatics Act, 1860 (23 & 24 Vict. c. 75), provides for the apprehension at any time of any person who has escaped from an asylum for criminal lunatics, and if a person escapes while being conveyed to an asylum, etc., he may be retaken at any time in like manner as if he had escaped from said asylum (s. 11 (2), 47 & 48 Vict. c. 64).

Officers of an asylum ill-treating lunatics, and any person or officer, etc., who rescues, or wilfully permits or connives at their escape, are liable to penalties and imprisonment (ss. 12 and 13, 23 & 24 Vict. c. 75, and s. 11 of 47 & 48 Vict.

c. 64), also ss. 322, 323, and as to abuse of female lunatic (*x*) s. 324 of the principal Act. Section 326 of Act as to application of penalties, and s. 4, Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), as to mitigation of punishment.

Mechanical restraint.—Section 40 (1) of Act of 1890. Mechanical means of bodily restraint shall not be applied to any lunatic unless the restraint is necessary for the purposes of surgical or medical treatment, or to prevent the lunatic from injuring himself or others; sub-s. (7): Any person who wilfully acts in contravention of this section is guilty of a misdemeanor.

Dumb or insane prisoner.—It is provided by the Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38, s. 2), that where in any indictment or information any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible according to law for his actions at the time when the act was done, or the omission made, then if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission. When such special verdict is found, the court is to order the accused to be kept in custody as a criminal lunatic. The law as to legal responsibility as laid down by the judges in *R.* v. *McNaughten*, 10 Cl. & Fin. 200, remains unaffected by this statute. If at any time during the hearing it is found that the person charged is mute from the visitation of God, or incapable of understanding the proceedings, the jury will be discharged, and the prisoner detained under the Criminal Lunatics Act, 1800 (39 & 40 Geo. 3, c. 94), s. 2, which statute provides the course to be pursued on the trial (*R.* v. *Berry*, 45 L. J. 123; L. R. 1 Q. B. D. 447; 40 J. P. 484). To establish at the trial the defence of insanity, it must appear that the accused did not know the nature of the act

(*x*) The offence is a misdemeanor punishable by two years' imprisonment, no "consent" or alleged consent is any defence.

he was doing, or that he did not know he was doing what was wrong. See Circular Letter of Secretary of State, November 25th, 1889, protesting against prisoners suspected of insanity being sent to prison in order that the prison may be used as a place of observation (Stone, 26th ed., p. 688).

Malicious Damage.

Malicious injury to property of all kinds is punishable under the Malicious Damages Act (24 & 25 Vict. c. 97). An analysis of the Act is given in Appendix, *post*. In order to constitute an offence within the meaning of the statute, the act must have been done *maliciously* (*y*).

The word "maliciously" must be understood as meaning *purposely* as distinguished from *in ignorance or by accident*. If the act be done wilfully or *wantonly*, it will be presumed to have been done maliciously (*z*).

The provisions of the Act shall equally apply whether the offence be committed from malice conceived against the owner of the property or otherwise (s. 58); and it shall be sufficient to prove that the party accused did the act with an intent to injure or defraud, without proving an intention to injure or defraud any particular person (s. 60).

Section 61 of Act authorizes the *arrest* of persons committing offences against the Act (see also s. 57).

As to killing domestic animals, fowls, etc.—Setting a rat trap in a private garden to catch cats or dogs trespassing there is not unlawful; a conviction under this section was quashed (*Bryan* v. *Eaton*, 40 J. P. 213, Treat. 39 J. P. 402); but if the animal is taken alive and afterwards killed, we think the offender might be convicted. Placing poisoned flesh in an inclosed garden for the purpose of destroying a dog in the habit of straying there, is not acting maliciously within this section (*Daniel* v. *Janes*, L. R. 2 C. P. D. 351; 41 J. P. 712), but *semble*, it is an offence within the Poisoned Flesh Prohibition Act, 1864 (27 & 28 Vict. c. 115), if the garden is not attached to a house. A farmer shot two fowls while trespassing on his land where seed had been recently sown. The owner had been warned against the trespass, there being a hole in the wall through which fowls entered. The Queen's Bench Division held that as defendant acted without malice and in defence of his crop, the court was

(*y*) Malice in ordinary acceptation means ill-will against any person, but in legal sense means wrongful act done intentionally without just cause or excuse (BAYLEY, J.)

(*z*) Where a person who fired at a boat to deter a party in it from shooting wild fowl, unintentionally shot a man in the boat, the act was held to have been done maliciously. *R.* v. *Ward*, 41 L. J. 69; 36 J. P. 453; see also *R.* v. *Welch*, 45 L. J. 17; 40 J. P. 183.

bound by *Daniel* v. *Janes*, and quashed the conviction. MATHEW, J., said, the effect of *Daniel* v. *Janes* is to give a licence to kill any animal found trespassing (*Smith* v. *Williams*, 37 Sol. J. 11; 56 J. P. 708; T. L. R. Vol. ix. p. 9, October 27th, 1892). But the former would not have been free from liability in a civil action, unless it could have been shown his property could not have been otherwise protected (Stone).

Manslaughter.—See HOMICIDE, *ante*.

Mantraps and Spring Guns.

Any person is guilty of a misdemeanor who sets, causes, or suffers to be placed, any spring gun, mantrap, or other engine calculated to destroy human life, or inflict grievous bodily harm upon a trespasser or any person coming in contact therewith, elsewhere than in a dwelling-house for its protection from sunset to sunrise (24 & 25 Vict. c. 100, s. 31).

Margarine.—See FOOD AND DRUGS, *ante*.

Marine Store Dealers.

Sections 538 to 543 of the Merchant Shipping Act (57 & 58 Vict. c. 60), apply to marine store dealers, who are required to have their names, together with the words "dealer in marine stores," legibly painted on their premises. The dealer is also required to keep books, and enter therein an account of the articles purchased, with the name and description of the person from whom purchased—Penalty, 20*l*., for second offence, 50*l*.

The dealer is prohibited from buying marine stores from any person apparently under the age of sixteen years, nor is he permitted to cut up any cable or similar article exceeding five fathoms in length, or unlay same into twine, etc., without obtaining permit, and publishing the notice required by the Act.

A "dealer in marine stores" is described as a person buying and selling anchors, cables, sails, or old junk, old iron, or marine stores of any description.

Persons living in inland towns and dealing in old iron and other articles not belonging to a wreck or ship, or otherwise connected with maritime purposes, are frequently styled

"marine store dealers"; but it is questionable whether they can be considered dealers within the meaning of the Act, or bound to comply with its provisions. See 19 J. P. 364; 22 J. P. 614. Dealers in old metals, however, are now subject to the provisions of 24 & 25 Vict. c. 110, and such dealers, as well as marine store dealers, come under the provisions of s. 13 of the Prevention of Crimes Act, 1871, see *post*.

Married Women's Property Act, 1882.

This Act (45 & 46 Vict. c. 75) repeals the Act of 1870 (33 & 34 Vict. c. 93). Since December 31st, 1882, all wives, whether married before that date or since, possess the same rights of property as if they were unmarried, their marriage making no difference whatever.

Sections 12 and 16 of the Act relate to criminal proceedings.

Section 12 enacts that every woman, whether married before or after the commencement of the Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject as regards her husband to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings for the protection and security of her own separate property as if such property belonged to her as a *feme sole*. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property, and in any proceeding *under this section* a husband or wife *shall be competent to give evidence against each other*, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceedings shall be taken by any wife against her husband by virtue of this Act *while they are living together*, as to or concerning any property claimed by her, nor while they are living apart as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

By the common law a woman cannot be convicted of stealing goods belonging to her husband, or to her husband and others, but this has been modified by the Married Women's Property Act, 1882, section 16 of which provides as follows:—"A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to the property of the wife, would make the husband liable to criminal proceedings by the wife under this Act shall in *like manner* render her liable to criminal proceedings by her husband (Stone, 29th ed., p. 943).

47 Vict. c. 14 (1884), was passed to remove any doubts as to the competency of a husband to give evidence against his wife in proceedings under this section, and it enables the husband to give evidence against his wife in like cases to

those in which the wife may give evidence against her husband under s. 12 of the Married Women's Property Act, 1882.

Summary Jurisdiction (Married Women) Act, 1895. (58 & 59 Vict. c. 39).

This Act came into operation on January 1st, 1896, and amends the law relating to the summary jurisdiction of magistrates in reference to married women, repealing the Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), and the Married Women (Maintenance in case of desertion) Act, 1886 (49 & 50 Vict. c. 52), and substituting the following provisions:

Any married woman whose husband

(a) has been convicted summarily of an aggravated assault upon her within the meaning of s. 43 of Offences Against the Person Act, 1861 (see Appendix, *post*); or

(b) has been convicted upon *an indictment* of an assault upon her and fined 5*l.* or imprisoned for at least two months; or

(c) has deserted her; or

(d) has been guilty of persistent cruelty to her or wilful neglect to provide reasonable maintenance for her or her infant children and by such cruelty or neglect caused her to leave and live apart from

him may apply at any court of summary jurisdiction acting in the town or district in which any such conviction has taken place or in which the cause of complaint has wholly or partially arisen for an order or orders containing all or any of the following provisions:

(a) A provision that the applicant be no longer bound to co-habit with her husband (which provision, while in force, shall have effect of a decree of judicial separation on ground of cruelty).

(b) A provision that the legal custody of any children of the marriage, while under the age of sixteen, be given to the applicant.

(c) A provision that the husband shall pay such weekly sum not exceeding 2*l.*, as the court considered reasonable, having regard to the means of both parties.

(d) A provision for payment of costs by either or both of them as the court think fit.

The adultery of the wife will be a bar to any order, provided the husband has not condoned or connived it, or by his wilful neglect or misconduct condoned to such adultery, and the court has power to vary or discharge orders. Provision is also made for appeals.

Desertion.

The question of "desertion" is a question of fact for the justices, varying by the circumstances of each case. See notes to page 945, Stone's Justices Manual, 29th ed.

Frailty of temper, unless shown by intolerable excesses, is not a reasonable cause for a husband withdrawing from his wife the protection of his home and society. If submission is the duty of the wife, protection is no less that of the husband. *Yeatman* v. *Yeatman*, 18 L. T. 415.

Desertion is the wilful absconding of the husband in spite of the wishes of the wife (*Thompson* v. *Thompson*, 27 L. J. 65), and means not only that the husband has absented himself but that he has left his wife unprovided for. *Henty* v. *Henty*, 33 L. T. 263. See also *Cargill* v. *Cargill*.

Note.—By Poor Law Amendment Act, 1834, s. 57, a man is legally liable to maintain the children of his wife born before marriage, whether they are legitimate or illegitimate, until they are sixteen.

Master and Servant.

False character.—If any person shall personate a master and give a false character to a servant or assert in writing that a servant has been hired for a period of time or was discharged at any time other than the time for and at which he has actually been hired or discharged, or that he has been in previous service, contrary to truth, or if any person shall offer himself as a servant pretending to have served where he has not served, or with a false certificate of character, or shall alter a certificate, or shall pretend not to have been in any previous service, contrary to truth, such offenders are liable on conviction before two justices of the peace to be fined 20*l.*, or in default three months' imprisonment.

Note.—A master is not bound to give a servant a character. *Carroll* v. *Bird*, 3 Esp. 201. A domestic or menial servant may be discharged without notice for a reasonable cause, such as moral misconduct, wilful disobedience to a lawful

order, or neglect of duty; and in such cases the servant is not entitled to any wages from the day he is discharged, except those then due.

Larceny by servants.—Where a servant is charged with larceny of money or chattel placed under his care, he will be as much guilty of larceny if he disposed of the property as if he had taken it out of the actual custody of his master, because the possession of the servant is in law the possession of the master. An unauthorized gift by a servant of his master's goods will be as much a felony as if he had sold or pawned them.

Misappropriation by servant—Corn for horses, etc.—A servant, contrary to his master's orders, taking from his master's possession any corn, roots, pulse, or other food for the purpose of giving the same to any horse or animal belonging to his master, shall not be guilty of felony; but shall, on conviction before two justices, be liable to three month's imprisonment, or forfeiture not exceeding 5*l*. The justices may dismiss the case if deemed too trifling (26 & 27 Vict. c. 103).

Merchandise Marks Act.

By the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), the law relating to fraudulent marks on merchandise is consolidated and amended.

Offences.—Forging or falsely applying trade marks or trade descriptions, selling, etc., goods with false trade mark.

Penalty on conviction on indictment, imprisonment for two years or fine, or both; on summary conviction four months or fine, and forfeiture of chattel.

The statute contains provisions for prohibiting the importation of goods which, if sold, would be liable to forfeiture (s. 16).

Merchant Shipping Act, 1894.

(57 & 58 Vict. c. 60).

This Act consolidates the laws relating to merchant shipping.

The Act enumerates offences which may be committed by seamen, ship owners, apprentices, pilots, passengers, etc., and contains provisions regarding marine store dealers, wreck salvage, fishing boats, etc.

Metal Dealers.

The Old Metal Dealers Act, 1861 (24 & 25 Vict. c. 110), regulates the business of dealers in metals, and was enacted to diminish the facilities for disposing of stolen goods. The Merchant Shipping Act, 1894, contains provisions relating to marine store dealers (see p. 227, *ante*), and the Prevention of Crimes Act, 1871, contains an important enactment as to purchasing metal in small quantities.

The term "dealer in old metals," shall mean any person buying and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods (s. 3).

Stolen property. Any justice, upon complaint on oath that the complainant has reason to believe, and does believe, that any old metal, stolen or unlawfully obtained, is kept in any house, shop, room, or place, by any dealer in old metals within his jurisdiction, may give authority by special warrant to a constable or police officer, to enter, in the daytime, such house, shop, room, or place, and to search for and seize all such old metals there found, and to carry the same before such justice, or some other justice exercising similar jurisdiction; and such justice shall thereupon issue a summons requiring the dealer to appear before two justices, and if the dealer shall not prove to their satisfaction how he came by the said articles, or if any dealer shall be found in possession of any old metal which has been stolen or unlawfully obtained, and on his being taken or summoned before two justices, it shall be proved to their satisfaction that at the time when he received it he had reasonable cause to believe it had been stolen or unlawfully obtained, then such dealer shall be liable to a penalty not exceeding 5*l*., and for any subsequent offence not exceeding 20*l*., or, at the discretion of the justices, in the case of any second or subsequent offence, to three months' imprisonment. This provision is not to interfere with any proceeding by indictment for receiving stolen goods (s. 4).

Register.—The convicting justices may direct the dealer to be registered by the chief officer of police, according to Form 1 in the Schedule, and after such registration the dealer shall conform to certain regulations (*a*) provided by s. 8 of the Act. These regulations require books to be kept and entries made of metal purchased and sold, and names of persons from whom purchased, etc. Dealers who are registered must give notice at the police office of any removal of their place of business. Two justices may, by writing, authorize inspectors or sergeants of police to visit registered places of business and inspect books and goods.

Section 13 of the Prevention of Crime Act contains the following important enactment as to purchasing metals in small quantities, p. 249, *post*.

(*a*) Metal must not be purchased from any person apparently under sixteen, nor before 9 A.M., or after 6 P.M.; nor must metal purchased be parted with within 48 hours.

Any dealer in old metals, who either personally or by any servant or agent purchases, receives, or bargains for any metal, new or old, in any quantity at one time of less weight than hereunder stated, is liable to a penalty of 5*l.* :—

Lead or any composite thereof	112 lbs.
Copper, brass, tin, pewter, German silver	56 ,,

Mines.

The Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), consolidates and amends the law relating to mines of coals, stratified ironstone, shale, and fireclay.

The Act of 35 & 36 Vict. c. 77, consolidates the laws relating to metalliferous and other mines.

Boys under twelve and females are not to be employed below ground.

As to larceny from and malicious injury to mines, see 24 & 25 Vict. c. 96, s. 38, and c. 97, s. 28, Appendix, *post*.

Murder. See Homicide.

Music and Dancing.

Public Health Acts Amendment Act, 1890.

(53 & 54 Vict. c. 59.)

In districts outside a radius of twenty miles from the metropolis within six months of *the adoption by the local authority* of Part Four of this Act every house, room, garden, etc., kept or used for public music, dancing or singing, must be licensed by the licensing justices of the licensing district. Penalty for keeping, etc., an unlicensed house not exceeding 5*l.* a day. Non-observance of any of the terms of the licence, not exceeding 20*l.* and a daily penalty not exceeding 5*l.* recoverable summarily and the justices may revoke the licence (s. 51). Justices in *petty sessions* may grant *temporary* licences for not more than fourteen days. Unlicensed places used for music, etc., are deemed disorderly houses. See also Theatres, *post*.

Nuisances.

A public nuisance is such an inconvenient or troublesome offence as annoys the community in general, and not a few

individuals only, and is indictable as a misdemeanor. No length of time will legalise a nuisance.

An offensive trade, either from noise or smell, is a nuisance. 28 J. P. 194.

Section 28 of the Towns Police Clauses Act, 1847, deals with nuisances in streets. See title TOWNS POLICE CLAUSES ACT, *post*; see also title RIOTS, *post*.

Every unauthorized obstruction of the highway is a nuisance. See title HIGHWAYS, *ante*.

In *R.* v. *Graham and Burns* (32 Sol. J. 179), CHARLES, J. ruled that there is no right to hold public meetings in Trafalgar Square or in any other public place, but that such places are "for people to pass along," a use which is directly in conflict with that for public meetings.

An encroachment or inclosure of a town or village green, also any erection thereon, or disturbance or interference or occupation of the soil thereof, which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, is a public nuisance (Commons Act, 1876 (39 & 40 Vict. c. 56), s. 29).

As to the nuisance created by a "merry-go-round" see *Lambton* v. *Mellish*, 58 J. P. 242. As to gipsy encampment see *Att.-Gen.* v. *Stone*, 60 J. P. 168.

Keeping ferocious animals without proper control is a nuisance.

The exposure of persons in public having contagious disease is a nuisance under Public Health Act, 1875, ss. 126—129. See title PUBLIC HEALTH ACT, *post*, p. 256.

Section 91 of the Public Health Act defines "nuisances" under that Act as:—

1. Any premises in such a state as to be a nuisance or injurious to health.
2. Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul or in such a state as to be a nuisance or injurious to health.
3. Any animal so kept as to be a nuisance and injurious to health.
4. Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family.
5. Any accumulation or deposit which is a nuisance or injurious to health.

But a penalty is not to be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture, if it is proved to the satisfaction of the court not to have been kept longer than is necessary for the purpose, and that the best available means have been taken for preventing injury to the public health.

Duty of police.—If a constable believes a nuisance to

exist in any place so as to endanger health, he should give information in writing to the sanitary authorities. *A constable is not authorized to enter any house or premises to seek for a nuisance without the consent of a justice.*

Offensive trades.—Any person establishing any offensive trade such as bone, soap, or tripe boiler, without consent of local authority, is liable to penalties (38 & 39 Vict. c. 55, s. 112). Complaint may be made to a magistrate if any ten inhabitants, any two qualified medical practitioners, or the medical officer of the local authority certify that such trade is a nuisance and injurious to health.

Steam whistles.—Persons using steam whistles or trumpets in factories, etc., for the purpose of summoning or dismissing workmen must obtain sanction of sanitary authority, which may be revoked on complaint of person in the neighbourhood (47 J. P. 744).

Procedure.

The mode of prosecution for common law nuisances is by indictment for misdemeanor, punishable by fine or imprisonment, or both, and abatement of the nuisance at the cost of the defendant, or a civil action for prohibition and damages may be maintained by a person aggrieved,

Under Public Health Act provision is made for summary procedure.

Obscene Books.

The Act, 20 & 21 Vict. c. 83, contains provisions for the suppression of trade in obscene books, prints, drawings, etc. Offenders can also be punished under the Vagrant Act. See title Vagrants, *post*.

Section 1 of Act provides for the issue of a warrant under certain circumstances to search for and seize all such books, pictures, etc., kept in any house, shop or other place. The warrant can only be issued by a stipendiary magistrate or two justices, and upon complaint on oath embodying circumstances of offence.

See also Indecent Advertisement Act, *ante*, and Town Police Clauses Act, *post*.

Pawnbrokers.

By the Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), persons receiving goods in pledge are required to keep books, etc. (described in Schedule 3 of the Act), showing entries of sales and goods received. They must produce them at a court, if required(s. 50); premises can be searched during business hours under the authority of a search warrant, and a constable executing such warrant can, if necessary, break open doors.

Pawns cannot be taken on Sundays, or on Christmas Day or Good Friday (*b*).

Illegal pawning.—Any person knowingly and designedly pawning anything the property of another person without authority is liable to a penalty of 5*l*. in addition to the full value of the article pawned.

Whether the offence of pawning the goods of another without his knowledge or consent will amount to unlawfully pawning only, or to larceny, will depend on the intent and ability of the party to redeem the goods in question. *R.* v. *Medland*, 5 Cox C. C. 292.

Under s. 103 of the Larceny Act, persons to whom any property shall be offered to be sold, pawned, etc., can, on suspicion that such property has been stolen, apprehend the party offering the same.

Pedlars.

(34 & 35 Vict. c. 96 (1871).)

This Act was passed to prevent disreputable persons, such as tramps and beggars, going about and carrying out illegal practices under the pretence that they are in the due execution of a legitimate business.

The term "pedlar" means any hawker, pedlar, petty chapman, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to

(*b*) Pledges to be redeemable within twelve calendar months of pawning.

town or to other men's houses, carrying to sell, or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft.

Persons standing in the street to sell their goods and not going either from house to house or from town to town do not seem to come within the definition of a pedlar (37 J. P. 316).

Persons carrying missionary bags with articles for sale are not pedlars. *Gregg* v. *Smith*, 28 L. T. 555.

Exemptions.—Certificates need not be obtained by commercial travellers or other persons selling or seeking orders for goods, wares, or merchandise to or from persons who are dealers therein and who buy to sell again, or selling or seeking orders for books as agents authorized in writing by the publishers of such books; sellers of vegetables, fish, fruit, or victuals; persons selling or exposing for sale goods, wares, or merchandise in any public mart, market, or fair legally established (s. 23).

Acting without certificate. -By s. 4 no one shall act as a pedlar without a certificate, and any person who acts as a pedlar without having obtained a certificate under this Act authorizing him so to act, may be fined 10*s*. for first, and 1*l*. for subsequent offences.

Certificates. —By s. 5 a pedlar's certificate shall be granted to any person by the chief officer of police of the police district in which the person applying for a certificate has, during one month previous to such application, resided, on such officer being satisfied that the applicant is above seventeen years of age, is a person of good character, and in good faith intends to carry on the trade of a pedlar. The application and certificate shall be in the form given in the schedule—fee, 5*s*. The certificate shall remain in force for one year from the date of issue. On the delivery up of the old certificate, or on sufficient evidence being produced to the satisfaction of the chief officer of police that the old certificate has been lost, that officer may, either at the expiration of the current year, or during the currency of any year, grant a new certificate in the same manner as upon a first application for a pedlar's certificate.

The certificate authorizes the person to act as a pedlar within any part of the United Kingdom, and for the purposes of the Markets and Fairs Act, 1847, it has the same effect, within the district for which it is granted, as a hawker's licence (s. 6 and 44 & 45 Vict. c. 45).

Section 8 provides for a register of certificates being kept in each district, with such particulars as the Home Secretary may direct.

By s. 9 forms of application for certificates shall be kept at every police office in every police district, and shall be given gratis to any person applying for the same, and all applications for certificates shall be delivered at the police office of the division or sub-division of the police district within which the applicant resides, and certificates, when duly signed by the chief officer of police, shall be issued at such office.

Sections 10 and 11 enact that a certificate must not be assigned or borrowed under a penalty of 20*s*.

By s. 12 any person who makes false representations with a view to obtain a pedlar's certificate; or forges or counterfeits a pedlar's certificate; or travels with same, shall be liable to a penalty of 2*l*., and for any subsequent offence to six months' imprisonment.

Vagrant.—A certificate does not exempt a person from being prosecuted under the vagrant law.

By s. 14, if any pedlar is convicted of any offence under this Act, the court before whom he is convicted shall endorse on his certificate a record of such conviction. The endorsements shall be evidence of the facts stated therein.

Appeal.—By s. 15, if the chief officer of police refuses to grant or endorse a certificate, the applicant may appeal to a court of summary jurisdiction in the place where such grant, etc., was refused, but must, within one week after the refusal, give to the chief officer of police notice in writing of the appeal. The appeal shall be heard at the next sitting of the court after the expiration of the said week, but the court may, on the application of either party, adjourn the case. The court shall hear and determine the matter of the appeal, and make such order thereon as seems just. Any certificate, by order of the court, shall have the same effect as if it had been originally granted by the chief officer of police.

Begging, etc.—Section 16 provides for the pedlar being deprived of his certificate by order of the court. If convicted of begging, he must be deprived.

Production of certificate.—By s. 17, any pedlar shall at all times, on demand, produce his certificate to any justice of the peace; or to any constable or officer of police; or any person to whom such pedlar offers his goods for sale; or any person in whose private grounds or premises such pedlar is found. And any pedlar who refuses to show his certificate to, and allow it to be read and a copy thereof to be taken by, any of the persons hereby authorized to demand it, shall for each offence be liable to a penalty not exceeding 5*s*.

By s. 18, where a person acting as a pedlar either refuses to show his certificate or has no certificate, or refuses to allow or attempts to prevent any such opening or inspection of his pack, box, bag, trunk, or case as is authorized under this Act, it shall be lawful for any of the persons authorized to demand the production of the certificate, and also for any other person acting by his order or at his request and in his aid, to apprehend such offender, and forthwith to convey or cause him to be conveyed before a justice of the peace.

By s. 19, any constable or officer of police at any time may open and inspect any pack, box, bag, trunk, or case in which a pedlar carries his goods, wares, and merchandise; and any pedlar who refuses to allow such constable or officer to open or inspect such pack, box, bag, trunk, or case, or prevents or attempts to prevent him from opening or inspecting the same, shall be liable for each offence to a penalty of 20*s*.

By s. 22, any act or thing by this Act authorized to be done by the chief officer of police *may be done by any police officer under his command authorized by him* in that behalf, and the term "chief officer of police" includes the police officer so authorized.

The terms "police district and chief officer of police" are defined in Schedule 1 of Act.

The Pedlars Act, 1881 (44 & 45 Vict. c. 45) enacts that a pedlar's certificate during the time for which it continues in force, shall authorize the person to whom it is granted to act as a pedlar within any part of the United Kingdom. As to "Hawkers," see title p. 176, *ante*.

Penal Servitude.

The punishment of transportation was abolished by 20 & 21 Vict. c. 3, s. 2, penal servitude being substituted in its place. Under 27 & 28 Vict. c. 47, s. 2, no person could be sentenced to penal servitude for a less period than five years, but the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), reduces the minimum for sentences of penal servitude *from five to three years;* s. 2 of the Penal Servitude Act, 1864, which made the minimum five years, being repealed.

See also Prevention of Crimes Act, *post,* and title Convicts, p. 117.

Convicts can obtain remission of one quarter part of their sentences (after deducting the first nine months during which they are undergoing separate confinement), by good behaviour in prison.

Perjury.

Perjury is the wilful false representation of some fact material to the question at issue, made on oath before some authority legally competent to administer it, and having jurisdiction in the matter. Subornation of perjury is procuring another to take such false oath. The offence is a misdemeanor not triable at sessions.

In general *two witnesses* should depose to the fact sworn to, otherwise it would only be one oath against another. Strong circumstantial evidence, however, in support of the direct testimony of one witness, may warrant a conviction.

Personation.

See False Personation Act, 1874 (37 & 38 Vict. c. 36).

Under Army Act, 1881, s. 142, any person falsely representing himself to belong or to be a particular man in regular or reserve forces shall be guilty of personation.

Petroleum.

The Acts relating to petroleum are 34 & 35 Vict. c. 105; 42 & 43 Vict. c. 47; and 44 & 45 Vict. c. 67. The first states the conditions as to the keeping of petroleum, the granting of licences by local authorities, and the mode of storage, conveyance, and testing.

Definition.—Petroleum as defined in this Act (1878) includes any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal, schist, shale,

pear, or other bituminous substance, and any product of petroleum or any of the above-mentioned oils, which, when tested in the manner prescribed in the Schedule to Act, gives off an inflammable vapour at a temperature of less than 73 degrees of Fahrenheit's thermometer.

Storage of petroleum.—Petroleum must not be kept except by licence of local authority; if such licence is not obtained the petroleum, with the vessel containing it, will be forfeited, and in addition to such forfeiture a penalty will be incurred by the occupier of the place in which it is kept of not more than 20*l.* a day for each day the petroleum is so kept. If the petroleum is kept in separate vessels each containing not more than a pint, and is securely stopped, or if the total amount kept does not exceed three gallons, this forfeiture and penalty does not apply.

Dealers in petroleum are required to show their place of storage to the officer of the local authority upon his producing a certified copy of his appointment, and to sell him samples of the petroleum they keep. Penalty for refusing or obstructing such officer not to exceed 20*l.* (ss. 11 and 12).

Warrant.—Under s. 3 warrants can issue to search, etc.

Petroleum (Hawkers) Act, 1881.—Persons licensed to keep petroleum may, if they also hold a hawker's or pedlar's licence, hawk petroleum either by themselves or by their servants. The regulations for such hawking are defined in s. 2 of 44 & 45 Vict. c. 67, and are as follows:—

(1.) The amount of petroleum conveyed at any one time in any one carriage shall not exceed twenty gallons.

(2.) The petroleum shall be conveyed in a closed vessel, so constructed as to be free from leakage.

(3.) The carriage in which the vessels containing the petroleum are conveyed shall be so ventilated as to prevent any evaporation from the petroleum mixing with the air in or about the carriage in such proportion as to produce, or be liable to produce, an explosive mixture.

(4.) Fires or lights, or any article of an explosive or highly inflammable nature shall not be brought into or dangerously near the carriage in which the petroleum is conveyed.

(5.) Such carriage shall be so constructed that the petroleum cannot escape in the form of liquid, whether ignited or otherwise.

(6.) Proper care shall be taken to prevent any petroleum escaping into any part of a house or building, or into a drain or sewer.

(7.) The petroleum shall be stored in some premises licensed for keeping petroleum (and in accordance with such licence), both every night and also when the petroleum is not being hawked.

(8.) Precautions shall be taken for the prevention of accidents by fire or explosion, and for preventing unauthorized persons having access to the vessels containing the petroleum, and every person concerned in hawking the petroleum shall abstain from any act which tends to cause fire or explosion, and is not reasonably necessary for the purpose of such hawking.

(9.) No article or substance of an explosive or inflammable character other than petroleum, nor any article liable to cause or communicate fire or explosion, shall be in the carriage while such carriage is being used for the hawking of petroleum.

For any contravention of this section the petroleum, together with the vessels containing, and the carriage conveying the same, are liable to be forfeited, and in addition the licensee by whom or by whose servants petroleum was being hawked, shall be liable on summary conviction to a penalty not exceeding 20*l*. Provided that—

(1.) Where some servant of the licensee or other person has, in fact, committed the offence, such servant or other person shall be liable to the same penalty as if he were the licensee.

(2.) Where the licensee is charged with the contravention of this section he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if the licensee proves to the satisfaction of the court that he had used due diligence to enforce the execution of this section, and that the said other person had committed the offence in question, without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the licensee shall be exempt from any penalty.

Power of seizure.—Constables, or any officers authorized by the local authority who have reasonable cause to believe that an infringement of the Act is being committed in relation to any petroleum, may seize and detain such petroleum, and also the vessels and carriage containing the same, until some court of summary jurisdiction has determined whether there was or was not an infringement of the Act.

As to petroleum in light locomotives, see p. 215, *ante*.

Hawking in boroughs.—The hawking of petroleum within the limits of any municipal borough may be forbidden by any lawful authority.

Poaching Prevention Act.

(25 & 26 Vict. c. 114).

The duties of the constabulary in relation to "game" are very clearly defined under the Poaching Prevention Act; their powers are limited to the search, etc., of suspected persons found in any highway, street, or public place.

The police have *no duties to discharge under the game laws*, which are enforced by the Excise, neither is it their duty to prosecute in cases of game trespass. See title GAME.

By s. 1 of the Act, "game" is defined as any one or more hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse and black or moor game.

Section 2 enacts "that it shall be lawful for any constable or police officer in any county, borough, or place in Great Britain and Ireland in any *highway, street, or public place* (*c*) to search any person whom he may have good cause to suspect of coming from any land (*d*) where he shall been unlawfully in search or pursuit of game, or any person aiding or abetting such person, and having in his possession any game unlawfully obtained, or any gun, part of gun, or nets or engines used for the killing or taking of game, and also to stop and search any cart or other conveyance in or upon which such constable or peace officer shall have good cause to suspect that any such game or any such article or thing is being carried by any such person. Should there be found any game or any such article or thing as aforesaid upon such person, cart, or other conveyance, the constable can seize and detain such game, article, or thing. Penalty 5*l.*, and forfeiture of game, etc.

By the provisions of the Act, in cases of conviction, the game, etc., seized by the constabulary is to be sold, and the amount realised to be paid over to the treasurer of the county or borough, or the game, etc., destroyed by order of the justices.

The Act does not empower a constable to take the persons into custody.

The constable will be justified in searching a person if he has good cause of suspicion, although it may afterwards turn out his suspicion was unfounded, and no offence under the Act can be proved. Where a constable saw a man with a gun in his hand on a public footway in the act of picking up a rabbit which another person threw to him out of the adjoining inclosed land from the spot where a gun had just been fired, and the man ran away and escaped for the time, it was held that actual search was not necessary to lay a foundation for the right to apply for a summons and proceed to a conviction. *Hall* v. *Knox*, 33 L. J. 11. It is necessary that the defendant should have succeeded in catching game to give the justices jurisdiction. *Jenkins* v. *King*, 36 J. P. 277.

The search is limited to "highway, street, or public place." If the game is not seized on the highway the constable has no power to go off the highway for that purpose (*e*) but seizure in hot pursuit may be in another place *Lloyd* v. *Lloyd* 49 J. P. 630. An actual search is not necessary if the

(*c*) Whether a railway platform is a "public place" or not, has not been decided under this statute, but see *Ex parte Freesland* under title VAGRANTS, *post*. Nor has a public-house to which poachers have been followed; 43 J. P. 695. See also *Case* v. *Storey*, 4 L. R. Ex. 319.

(*d*) It is not necessary to prove by direct evidence the specific land on which the game was killed or taken. *Evans* v. *Botterill*, 33 L. T. 50.

(*e*) *Turner* v. *Morgan*, 44 L. J. 161; 39 J. P. 695.

constable sees the game or gun, etc., actually upon the person (*f*), but there must be a seizure of the gun, net, game, etc., by the constable; "seizure" (according to SMITH, J.) being a necessary condition in order to give the constable a right to apply for a summons.

A constable has no authority under the Act to seize dogs or ferrets (45 J. P. 198). Whether the constable can seize powder, shot, flasks, etc., see 31 J. P. 47.

It is not necessary in order to commit a number of defendants found together that a gun, net, game, etc., should be found on each of them.

As to killing or taking hares or conies in warrens, see 24 & 25 Vict. c. 96, s. 17 (Larceny Act), Appendix, *post*. See also same Act as to killing or taking deer (s. 12); fish s. 24); pigeons (s. 23); birds (s. 21); and see title LARCENY, *ante*, as to rooks, etc.; and as to eggs of swans, wild ducks, and game birds, see 1 & 2 Will. 4, c. 32, title GAME, *ante*.

Poisons.

By 31 & 32 Vict. c. 121 (Pharmacy Act, 1868) poisons can only be sold by pharmaceutical chemists or chemists and druggists, who must be registered under the Act. Such persons are required to keep a book, in which they are bound to make an entry of all sales of poisons, giving name and address of person to whom sold.

The Act prohibits the sale of poisons to persons unknown to the seller unless introduced by some person known to him, and requires that a label with the word "poison," etc., shall be affixed to the bottle or box containing such poison. Apothecaries, veterinary surgeons, and wholesale dealers in poisons are exempted from certain provisions of the Act, as also dealers in patent medicines.

14 & 15 Vict. c. 13, contains special provisions regulating the sale of arsenic. See title ARSENIC, *ante*.

Poisoning with intent to murder, injure, etc., is treated of, under 24 & 25 Vict. c. 100, ss. 11, 14, 19, 22, 59. See Appendix, *post*.

As to Poisons and Antidotes, see Appendix, *post*.

Drugging Animals.—The Act 39 & 40 Vict. c. 13, prohibits any person wilfully administering to or causing to be administered to or taken by any horse, cattle, or domestic animal (without reasonable cause or excuse) any poisonous drug or substance under certain penalties, unless the person be the owner, or acting by his authority.

(*f*) *Hall* v. *Knox*, 33 L. J. 1.

The Poisoned Flesh Prohibition Act (27 & 28 Vict. c. 115), renders it penal to lay poisoned flesh on land. Poisonous preparations can, however, be placed in stacks, houses, or inclosed gardens for the destruction of rats and mice, or in drains, provided the drains be protected so as to prevent any dog from entering.

Poisoned Grain Prohibition Act (26 & 27 Vict. c. 113), renders it penal to sell or expose for sale, or to set, lay, or sow or cause to be sown, grain so mixed with poison as to render it poisonous, and calculated to destroy life.

Putting poison to kill game, penalty 10*l.* (Game Act, 1831, s. 3).

Exception: The use of any solution, etc., used for dressing, etc., any grain or seed for *bonâ fide* use in agriculture only, or the sowing of grain so dressed, is not prohibited.

Police (Property Act), 1897.

This Act enables Secretary of State to make regulations with respect to unclaimed property in possession of police. The operative section (2) is given in Appendix (Home Office Circulars), *post*.

Post Office Offences.

Postmen or drivers of mail carts, etc., guilty of any act of drunkenness, negligence, or other misconduct whereby the safety of a post letter bag or post letter may be endangered, or who wilfully mis-spend their time so as to retard or delay mails, or give false information of assaults or attempted robbery upon them, or commit other offences enumerated in 7 Will. 4 & 1 Vict. c. 36, s. 7, are liable to fine or imprisonment.

Under 7 Will. 4 &1 Vict. c. 36, s. 25, the Home Secretary has power to authorize the Postmaster-General to inspect any letter sent through the post office, but it is a power which is rarely exercised, except where some injury to the State may be apprehended.

As to stealing of post letter or letter bags by post office officials, see Larceny Act, Appendix, *post*.

The Post Office (Protection) Act, 1884, provides for the punishment of a number of offences, such as placing explosive, dangerous, or noxious substances, or any fire or light in or against any letter box or injuring any letter box; sending by post any explosive, dangerous, or noxious substance;

enclosing in a postal packet any indecent or obscene print; sending any such packet having any indecent words or marks upon it; fixing placards, etc., to post offices or letter boxes; imitating and using fictitious stamps, etc.

Section 11 of Act deals with offence of forging, altering, or disclosing the contents of a telegram. See also title TELEGRAPHS, *post*.

Preaching.

The Act 52 Geo. 3, c. 155, requires any house or premises to be registered wherein more than twenty persons assemble for religious worship, but there is no specific law on the subject of open-air preaching or meetings for religious worship held in the public streets. If held in the street such meetings appear to stand on the same footing as other obstructions of the highway (see title NUISANCES, *ante*), but where meetings in the streets for religious worship are conducted with decency and order, the excellence of the object would be an excuse for what otherwise might be considered an obstruction, provided ample space be left for the ordinary street traffic.

As to disturbances in street by the Salvation Army, see title RIOTS, *post*.

Prevention of Crimes Act.

(34 & 35 Vict. c. 112.)

The Prevention of Crimes Act, 1871, had for its object, as its name denotes, the more effectual prevention of crime in this country. Its main provisions refer to the treatment of convicts on licence.

CONVICTS.

Any constable in any police district may, if authorized in writing by the chief officer of police of that district, without warrant, take into custody any convict (*g*) who is the holder of a licence under the Penal Servitude Acts, if it appears to such constable that he is getting his livelihood by dishonest means, and may bring him before a court of summary jurisdiction for adjudication (s. 3).

If it appears that there are reasonable grounds for believing that the convict is getting his livelihood by dishonest means,

(*g*) As to convict reporting himself to police, see Prevention of Crimes Act, 1879, *post*, p. 251.

he shall be deemed to be guilty of an offence against this Act, and his licence shall be forfeited.

Section 4 refers to convicts breaking the conditions of their licence, which is made an offence against the Act, and is punishable with three months' imprisonment with hard labour.

Reporting.—Every holder of a licence under the Penal Servitude Acts who is at large in Great Britain or Ireland shall notify his residence to the chief officer of police of the district in which his residence is situated, and shall, whenever he changes such residence within the same police district, notify such change to the chief officer of police of that district, and whenever he changes his residence from one police district to another shall notify such change of residence to the chief officer of police of the district which he is leaving, and to the chief officer of police of the district into which he goes to reside; moreover every male holder of such a licence as aforesaid shall, once a month, report himself at such time as may be prescribed by the chief officer of police of the district, either to such officer himself or to such other person as that officer may direct, and such report may be made personally or by letter, as the chief officer directs (s. 5). See p. 252.

If any holder of a licence who is at large in Great Britain or Ireland *remains in any place for forty-eight hours without notifying the place of his residence to the chief officer of police* of the district in which such place is situated, or fails to comply with the requisitions of this section on the occasion of any change of residence, or as to reporting himself once in each month, he shall in every such case, unless he proves to the satisfaction of the court that he did his best to act in conformity with the law, be guilty of an offence against this Act, and upon conviction *his licence may be forfeited.*

Registers.—Registers of criminals are to be kept for England, Scotland, and Ireland, containing such particulars as the Home Secretary or Lord Lieutenant shall require. The Home Secretary, and in Ireland the Lord Lieutenant, may make regulations as to the photographing of all prisoners convicted of crime confined in any prison (39 & 40 Vict. c. 23).

Persons twice Convicted.

Where any person is convicted on indictment of a crime and a previous conviction of a crime is proved against him

he shall at any time within seven years immediately after the expiration of the sentence passed on him for the last of such crimes, be guilty of an offence against the Act, and be liable to imprisonment for one year under the following circumstances :

1. If, on being charged by a constable with getting his livelihood by dishonest means, and brought before a court of summary jurisdiction, it appears to such court that there are reasonable grounds for so believing ;

2. Or if, on being charged with any offence, and required by a court of summary jurisdiction to give his name and address, he refuses to do so, or gives a false name or address ;

3. Or if he is found in any place under such circumstances as to satisfy the court that he was about to aid in the commission of any offence ;

4. Or if he is found in or upon any dwelling-house, or any building, yard, or premises, being parcel of or attached to such dwelling-house, or in or upon any shop, warehouse, counting-house, or other place of business, or in any garden, orchard, pleasure ground, or nursery ground, or in any building or erection in any garden, orchard, pleasure ground, or nursery ground, without being able to account to the satisfaction of the court for his presence on such premises.

Arrest.—In the first-mentioned case any constable, if authorized by the chief officer, may arrest without warrant. In the third case a constable may arrest without being authorized, and without warrant. In the fourth case anybody may arrest (s. 7 extended by s. 6 of Penal Servitude Act, 1891).

Police supervision.—A person twice convicted of a crime may be subjected to police supervision for seven years, and to such person the provisions of s. 5, as to reporting, shall apply (Act of 1871, s. 8) (see also p. 247).

Harbouring Thieves.

Persons harbouring thieves may be fined 10*l.*, or sentenced to two (*h*) months' imprisonment with hard labour, and in addition may be bound over to keep the peace for twelve months, and if public-house keepers they must produce their licence, which may be forfeited (s. 10).

Assaulting Police.

Any person convicted of assaulting police in the execution of their duty shall be liable to a penalty not exceeding 20*l.*,

(*h*) Similar provisions apply to brothel keepers under s. 11.

and in default of payment to be imprisoned with or without hard labour for three months, or to be imprisoned for six months, or in case such person has been convicted of a similar assault within two years, nine months, with or without hard labour (s. 12). This section is now extended by 48 & 49 Vict. c. 75, and applies to all cases of resisting or obstructing the police when in execution of duty, but in such cases the fine is not to exceed 5*l.*, or the imprisonment two months.

Metal Dealers.

Dealers in old metals purchasing quantities less than 112 pounds of lead, or any composite thereof, or 56 pounds of copper, brass, tin, pewter, German silver or spelter shall be liable to a penalty of 5*l.* (s. 13). The term "dealer in old metals" shall mean any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only, or together with second-hand goods or marine stores. See Old Metal Dealer, *ante*, p. 232.

Children of Convicts.

Section 14 provides for children (*i*) under the control of women convicts being sent to industrial schools.

Vagrants.

Section 15 amends the Vagrant Acts by making it unnecessary where a person is charged with intending to commit a felony to prove any particular acts, but the justices are to decide from the character of the accused and the circumstances of the case what his intention was.

Search for Property.

Any constable may, if authorized in writing by a chief officer of police, enter any house, shop, warehouse, yard, or other premises in search of stolen property, and search and seize any property he may believe to have been stolen, as if he had a search warrant, and the property seized corresponded

(*i*) The child of a female prisoner may be received into prison with its mother, provided it is at the breast; an authority from the committing magistrate should accompany the prisoner. Prison Rules, February 19th, 1878.

to the property therein described. Where any property is seized under this section the person on whose premises it was, or from whom it was taken, shall, unless previously charged with receiving, be summoned before a court of summary jurisdiction to account for such property, and such court shall make such order respecting the disposal of such property, and may award such costs as the justice of the case may require (s. 16).

A chief officer of police may give such authority—

1. When the premises to be searched are, or within twelve months have been, in the occupation of any person convicted of receiving or of harbouring thieves; or

2. When the premises are in the occupation of any person convicted of fraud or dishonesty, and punishable by penal servitude or imprisonment, the chief officer need not on giving such authority specify any particular property, but may give such authority if he has reason to believe generally that such premises are being made a receptacle for stolen goods.

Previous Convictions.

Evidence of previous conviction may be proved by producing a record of such conviction or extract, signed by the proper person, and proving the identity of the accused. Such record or extract of a conviction shall, in the case of an indictable offence, consist of a certificate containing the substance and effect of the indictment and conviction, and purporting to be signed by the clerk of the court or other officer having the custody of the records of the court by which such conviction was made, or purporting to be signed by the deputy of such clerk or officer; and in the case of a summary conviction shall consist of a copy of such conviction, purporting to be signed by any justice of the peace having jurisdiction over the offence in respect of which such conviction was made, or to be signed by the proper officer of the court by which such conviction was made, or by the clerk or other officer of any court to which such conviction has been returned (s. 18).

A record or extract of any conviction made in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

A previous conviction in any one part of the United Kingdom may be proved against a prisoner in any other part of the United Kingdom; and a conviction before the

passing of this Act shall be admissible in the same manner as if it had taken place after the passing thereof.

A fee not exceeding 5*s*. may be charged for a record of a conviction given in pursuance of this section.

The mode of proving a previous conviction authorized by this section shall be in addition to and not in exclusion of any other authorized mode of proving such conviction.

Receiving.

In cases of receiving stolen property, evidence of other property stolen within twelve months being found in the same possession may be given. It may also be proved that the accused has within five years preceding been convicted of fraud or dishonesty; provided that seven days' notice in writing shall have been given to the accused of such intention (s. 19).

Chief officer of police means in England, elsewhere than in the city of London and metropolitan police district, the chief constable, or head constable, or other officer, by whatever name called, having the chief command of the police in the district in reference to which such expression occurs (s. 20).

Prevention of Crimes Act, 1879.
(42 & 43 Vict. c. 55.)

Reporting.—Any holder of a licence required under s. 5, and any person subject to the supervision of the police required under s. 8 of the Prevention of Crimes Act, 1871, to notify his residence, or any change of his residence, to a chief officer of police, shall comply with such requirements by personally presenting himself and declaring his place of residence to the constable or person who at the time when such notification is made is in charge of the police station or office of which notice has been given to such holder or person as the place for receiving his notification, or if no such notice has been given, in charge of the chief office of such chief officer of police.

The power of the chief officer of a police district to direct that the reports required by ss. 5 and 8 of the Prevention of Crimes Act, 1871, to be made by holders of licences and persons subject to the supervision of the police shall be made to some other person shall extend to authorize him to direct such reports to be made to the constable or person in charge

of any particular police station or office without naming the individual person. See also p. 247.

Any appointment, direction, or authority purporting to be signed by the chief officer of police, and to have been made or given for the purposes of this Act, or of ss. 5 and 8 of the Prevention of Crimes Act, 1871, or one of them, shall be evidence, until the contrary is proved, that the appointment, direction, or authority thereby made or given was duly made or given by the chief officer of police, and evidence that it appears from the records kept by authority of the chief officer of police that a person required as above mentioned to notify his residence or change of residence has failed to do so, shall be *primâ facie* evidence that the person has not complied with such requirement; but if the person charged alleges that he made such notification or report to any particular person or at any particular time, the court shall require the attendance of such persons as may be necessary to prove the truth or falsehood of such allegation.

Prisons.

The laws relating to prisons other than convict or military or naval prisons are consolidated and amended by 28 & 29 Vict. c. 126. Persons aiding prisoners to escape are guilty of felony. The introduction, etc., into a prison, contrary to the regulations, of spirituous or fermented liquors or tobacco, or any letter or article, is punishable by fine or imprisonment.

Offences by prisoners are punishable by confinement in punishment cell or personal correction. See also 40 & 41 Vict. c. 21, ss. 14 and 43.

The Prevention of Crimes Act, 1871, s. 6, contains regulations regarding photographing prisoners; the refusal to obey is an offence against prison discipline (see p. 247).

As to "Escape," "Prison Breach," etc., see PRISONERS, p. 18).

The importation of "foreign prison-made goods" is prohibited by 60 & 61 Vict. c. 63.

Visiting committee.—A visiting committee is to be annually appointed of such number of justices, and in such manner as the Secretary of State may by rule prescribe in accordance with 28 & 29 Vict. c. 126, s. 13. The duties of the committee are defined by s. 14; see also s. 15 as to general power of entry into prison by justice.

Prize Fights.

Combatants at a prize fight are each guilty of an assault upon the other. A sparring match with boxing gloves is no assault, as the parties consent to receive the moderate blows given, but if men agree to damage each other consent is immaterial. An assembly of persons to witness a prize fight is an unlawful assembly, and persons present and countenancing the fight are guilty of a misdemeanor. By a recent decision of the Court for Crown Cases Reserved, it was ruled by a majority of the judges present that simply witnessing a prize fight is not an offence, unless the spectators encourage it in some active way than by their mere presence (*k*). It is the duty of magistrates to cause the intending combatants to be brought before them and bound over to keep the peace. An exhibition of skill in sparring is not illegal, but if parties meet intending to fight and injure each other it is a prize fight, whether the parties fight in gloves or not (*l*). Railway companies are liable to penalties under 31 & 32 Vict. c. 119, s. 21, for knowingly providing trains for prize fights.

Challenge to fight a duel.—At common law it is a misdemeanor to challenge another to fight a duel or even to provoke another to send a challenge.

Public Health Act.

The Public Health Acts consist of the Public Health Act, 1875 (38 & 39 Vict. c. 55), and a number of statutes since passed dealing with special matters connected with health and sanitation, the most recent of which are the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), and the Public Health Act, 1896 (59 & 60 Vict. c. 19).

The Public Health Acts apply to the whole of England except the metropolis. The Act of 1875 contains 343 sections, and for the sake of clearness is distributed under eleven principal headings. England is divided into urban and rural sanitary districts (s. 5). Urban districts are boroughs (acting by the council); Improvement Act districts

(*k*) *R.* v. *Coney*, L. R. 8 Q. B. D. 534; and 46 J. P. 404.
(*l*) *R.* v. *Orton*, 39 L. T. 293; 43 J. P. 72.

(acting by the commissioners); Local Government districts (acting by the local boards). A rural district is the area of any union which is not coincident in area with an urban district, nor wholly included in an urban district, and the rural district council are the rural authority.

Various penalties attach to the non-observance of the provisions of the Act, and these penalties are enforceable and recoverable by the local authority.

The local authority may appear before any court or in any legal proceedings by their clerk or by any officer or member authorized generally or in respect of any special proceeding by resolution of such authority, and such clerk, officer (*m*), or member is to be at liberty to institute and carry on any proceedings which the local authority is authorized to institute and carry on under the Act (38 & 39 Vict. c. 55, s. 259).

The police may, however, under certain circumstances, be required to enforce some of the provisions of the Act relating to nuisances, common lodging-houses, infectious diseases, etc.

The Act is very voluminous, containing over 343 sections (besides schedules).

Sanitary provisions. — Under the head of "Sanitary Provisions" are included regulations as to sewerage (s. 21); house drainage (s. 23); buildings without drains, etc. (ss. 25, 26); privies, etc. (ss. 36—41); scavenging and cleansing streets and houses, filthy houses, etc. (ss. 43—46).

(*m*) The local board of Torquay passed a resolution that the superintendent and the sergeant of the county police for the time being acting within the district of Torquay be authorized, as officers of the board, "to institute and prosecute, from time to time, all such proceedings as may be necessary" under certain specified clauses of an incorporated local Act. No separate police force for the district of Torquay existed, the police officers stationed there being a portion of the county constabulary, acting under the orders of the chief constable of the county, and they were in no way accountable to the local authority.

The Q. B. Division quashed a conviction, and held that the local board could only delegate authority to their own officers. *Kyle* v. *Barber*, 52 J. P. 724; 58 L. T. 229. The attention of the court does not appear to have been directed to s. 189, under which the board could appoint any number of officers for the execution of the Act (Stone's Justices' Manual, 29th ed., p. 838).

See also "Police Regulations" (Public Health Act), *post*, and title, TOWNS POLICE CLAUSES ACT, *post*.

Urban Districts.

Any person who in any *urban* district keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person, or suffers any waste or stagnant water to remain in any dwelling-house for twenty-four hours after written notice to him from the urban authority to remove the same, or allows the contents of any water-closet or cesspool to overflow or soak therefrom, shall for every such offence be liable to a *penalty* not exceeding 40*s*., and not exceeding 5*s*. for every day the offence is continued, and the urban authority *shall* abate every such nuisance, and may recover in a summary manner the expenses incurred from the *occupier* of the premises on which the nuisance exists (s. 47).

Sections 48 to 50 relate to offensive ditches, collection of matter, manure, etc.

Sections 60 to 70 as to water supply, polluted wells, etc.

Sections 73 to 75 as to occupation of cellar dwellings contrary to the provisions of the Act.

Bye-laws.—An *urban* authority may also, under s. 44, make *bye-laws* for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish, and for the prevention of the keeping of animals on any premises so as to be injurious to health.

Common Lodging-house.

A person shall not keep a common lodging-house unless the house is registered, and the number of lodgers to be received authorized (ss. 76, 77).

A house is not to be registered until it has been inspected and approved by some officer of the local authority (s. 78).

Section 79 relates to affixing name, etc., on premises.

Section 80 provides for the making of bye-laws by the local authority.

Section 81 requires that there shall be a proper water-supply (*n*) to such houses.

The keeper of a common lodging-house is required to lime-wash the walls and ceilings of his house in the first weeks of April and October in every year; penalty for failing to do so, 40*s*. (s. 82).

The keeper of a house, if required, is bound to furnish a

(*n*) An Act of 1878 (41 & 42 Vict. c. 25) amends the Act of 1875 so far as relates to the supply of water.

report of all persons resorting to his house during preceding day or night (s. 83).

Immediate notice has to be given of outbreak of fever or infectious disease (*o*) (s. 84).

The keeper of a lodging-house is liable to a penalty of 5*l*. if he refuses access to the house or any part of it at any time to any officer of the local authority (s. 85).

By s. 89 of the Act the expression "common lodging-house" includes in any case in which only part of a house is used as a common lodging-house, *the part* so used of such house. This is the only definition of the term "common lodging-house" given in the Act.

A lodging-house open to all comers, where pedlars and persons suspected of vagrancy are received at sixpence a night, and have their meals in one common room, is "a common lodging-house" under the Act. *Langdon* v. *Broadbent*, 42 J. P. 56, 67; 37 L. T. 434.

Section 90 empowers the Local Government Board to make bye-laws for the regulation of houses let as lodgings.

Nuisances.

For the purposes of this Act, s. 91 defines as nuisances—

(1) Any premises in such a state as to be a nuisance or injurious to health (*p*); (2) any pool, ditch, gutter, washhouse, privy, urinal, cesspool, drain, or ashpit, so foul or in such a state as to be a nuisance or injurious to health; (3) any animal so kept as to be a nuisance or injurious to health; (4) any accumulation or deposit which is a nuisance or injurious to health; (5) any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family; (6) any factory, workshop, or workplace (not already under the operation of any general Act for the regulation of factories or bakehouses), not kept in a cleanly state, or not ventilated in such a manner as to render harmless, as far as practicable, any gases, vapours, dust, or other impurities generated in the course of the work carried on therein, that is a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein; (7) any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used therein, and is used for working engines by steam (*q*), or in any mill, factory, dye-house, brewery, bakehouse, or gasworks, or in any manufactory or trade process whatsoever;

(*o*) See heading "Infectious Diseases" (Public Health Act), *post*, as to removal to hospital.

(*p*) Section 97 of Act empowers the court to prohibit any premises being used for habitation which, in the opinion of the court, are unfit for human habitation.

(*q*) Steam whistles cannot be used for summoning workmen without sanction of local authority.

(8) any chimney (not being the chimney of a private dwelling-house) sending forth black smoke (which need not be proved to be injurious to health) in such quantity as to be deemed a nuisance.

The above shall be deemed to be nuisances liable to be dealt with summarily under this Act (s. 91).

Certain "exceptions" are contained in a proviso to the section.

Notice.—Under s. 93 of the Act information of any nuisance as defined in s. 91 of the Act may be given to the local authority by any person aggrieved, by any two inhabitant householders, by any officer of such authority, or the relieving officer, or any constable or officer of the police force of such district (s. 93).

Under ss. 103 and 105 when proceedings are taken, the court before whom the case is heard may adjourn the hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and may authorize the entry into such premises *of any constable* or other person for the purpose of such examination. Any constable authorized under this section shall have the like powers and be subjected to the like restrictions as if he were an officer of the local authority.

Under s. 106, when it is proved to the satisfaction of the Local Government Board that a local authority has made default in the performance of their duty, in relation to nuisances, the Local Government Board may authorize *any officer of police* acting within the district of the defaulting authority to institute any proceedings which the defaulting authority might institute with respect to such nuisance, but such officer of police shall not be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or the warrant of a justice for the purpose of carrying into effect the enactment.

Offensive Trades.

Section 112 restricts the establishing of offensive trades—such as blood, bone, or soap boiling—within the district of an urban authority without their consent; *penalty*, not exceeding 50*l.*; and on the certificate of two medical practitioners or ten inhabitants of the district of an urban authority that any place used for trade or manufacture causing effluvia is a nuisance or injurious to health, such

authority shall make complaint to a justice, who may order same to be carried before court of summary jurisdiction; a penalty of 5*l.* and subsequent penalties up to 200*l.* on offender can be inflicted.

Unsound Meat.

Sections 116 to 119 relate to sale or exposure for sale, etc., of meat unfit for human food. The police are not empowered to interfere with or seize such meat, but the circumstances should at once be reported to the medical officer of health or inspector of nuisances.

Infectious Diseases.

Sections 124 and 125 relate to removal to hospital under the order of a justice and on a medical certificate of any person who is suffering from any dangerous infectious disorder, and is without proper lodging or accommodation, or lodging in a room occupied by more than one family, or on board any ship or vessel. The order may be addressed to a *constable* or officer of the local authority.

Where the body of one who has died from infectious disease is retained in a room in which persons live or sleep, or any dead body is in such a state as to endanger the health of the inmates of the house or room, a justice may on a medical certificate order the body to be removed at the cost of the local authority to the mortuary and buried within a limited time.

Under s. 126 persons are liable to a penalty of 5*l.* for exposing themselves in any street, public place, or public conveyance, etc., when suffering from any *dangerous* infectious disorder. If any person in charge of any person so suffering so exposes such, or offers, gives, lends, sells, transmits or exposes, without previous disinfection, any bedding, clothing, rags, or other things which have been exposed to infection, he is equally liable.

A person suffering from an infectious disorder is also liable to penalties for entering a public conveyance without notifying to the driver that he is suffering from such disorder. The driver is bound to disinfect the conveyance after use (s. 127).

Persons are liable to penalties for letting lodgings in house where person has been suffering from any dangerous

infectious disorder without properly disinfecting house to the satisfaction of a medical practitioner as testified by his certificate (s. 128).

Also for making false statements when letting house, etc., when questioned by any person as to the fact of there being or having been therein, within six weeks previously, any person suffering from any dangerous infectious disease (s. 129).

Section 130 as to regulations of Local Government Board in cases of cholera or other epidemic.

The local authority may (*r*) order the disinfecting of houses and the disinfection of infected bedding (ss. 120, 121).

Notification of Infectious Diseases Act (*s*).

Within the metropolitan boundary, and, *after the adoption* of the Infectious Diseases (Notification) Act, 1889 (52 & 53 Vict. c. 72), by the local authority, it will be the duty of the following persons to notify the existence of infectious diseases to the medical officer of health for the district, viz. :—(1) The head of the family to which the patient belongs, and on his default (2) the nearest relative of the patient present in the building, or in attendance on the patient, and on their default (3) every person in charge of or in attendance on the patient, and on their default

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(*r*) Rules for Disinfecting an Unoccupied Room.

Close every door and window, and stop up every opening or crevice with old rags or tow.

Fumigate by any of the following methods :—

By carbolic acid.—Place some pure carbolic acid in shallow vessels around the room.

By chlorine.—Place a few saucers in different parts of the room, containing a mixture of one part of common salt, one part of black oxide of manganese, and two parts of oil of vitriol.

By iodine.—Place two drachms of iodine in a metal cup or vessel, and place a lamp or burning candle underneath it till it evaporates.

By sulphurous acid.—Burn sulphur in saucers.

By nitrous acid fumes.—Place several cups into saucers or basins containing hot water, and inside the cups put two ounces of nitrate of potash and one ounce of sulphuric acid.

Furniture and floors should be well washed or scrubbed with a solution of chloride of lime ; the latter may be sprinkled with the powdered chloride of lime or Dougall's powder. Paper should be stripped from walls, and the walls and ceilings should be whitewashed.

(*s*) The terms "infectious" and "contagious" (catching) applied to a disease signify that it is communicable from the sick to the healthy.

The following are the principal infectious diseases :—Eruptive fevers : measles, small-pox, and scarlet fever. Continued fevers : typhus, typhoid, relapsing, and yellow fevers. Diphtheria, erysipelas, whooping-cough, and cholera.

(4) the occupier of the building. In addition to this, the doctor attending has to send notice to the medical officer of health. Fine for failure, 40*s*. The infectious diseases, of which notice must be given, include small-pox, cholera, diphtheria, membranous croup, erysipelas, scarlatina, or scarlet fever, and typhus, typhoid, enteric, relapsing, continued and puerperal fevers, and the local authority may extend the Act to other infectious diseases.

The Infectious Disease (Prevention) Act, 1890 (53 & 54 Vict. c. 34), contains provisions as to the cleansing and disinfecting of premises, etc., retention of bodies for more than forty-eight hours of persons dying from infectious diseases.

Epidemic Diseases.

Under s. 134 of the Public Health Act, 1875, the Local Government Board is empowered to make special regulations in cases where any locality is threatened with or is affected by any formidable epidemic or infectious disease.

See also ss. 135—140.

Public grounds, etc.—The urban authority may make bye-laws for the regulation of public walks or grounds, and may authorize any officer of the urban authority or any constable to remove from such grounds any person infringing bye-laws (*t*) (s. 164).

An *urban* authority may make bye-laws for prevention of danger from whirligigs and swings worked by steam power, and from the use of firearms in shooting galleries and ranges (Public Health Act Amendment Act, 1890).

Markets and slaughter houses.—See ss. 167—170.

Horses and boats.—Section 172 relates to licensing horses, etc., standing for hire; also to the licensing of pleasure boats.

Procedure.—Sections 251 to 265 define procedure under the Act, and recovery of penalties.

Fruit pickers' lodgings, etc.—Local authorities may make bye-laws for securing the decent lodging and accommodation of persons engaged in hop-picking; and s. 2 of 45 & 46 Vict. c. 23, authorizes the making of similar bye-laws for persons engaged in picking fruit and vegetables.

(*t*) Or bye-laws regarding pleasure boats on lake or ornamental water in public park.

Police Regulations.

Towns Police Clauses Act, 1847.—By s. 171 certain provisions of the Towns Police Clauses Act, 1847 (*u*), are incorporated with the Public Health Act, extending to places that are under the latter Act the provisions of the former Act regarding obstruction and nuisances in the street, fires, places of public resort, hackney carriages, public bathing, etc. The expression the "superintending constable," or "any constable or other officer appointed by virtue of this or the special Act," shall include *any superintendent of police and any constable or officer of police* acting for or in the district of any urban authority.

The Public Health Act, 1883.—This Act was passed to make provisions with respect to the support of public sewers and sewage works in mining districts.

Public Stores.

The Public Stores Act, 1875 (38 & 39 Vict. c. 25), consolidated and amended the law relating to public stores. The following sections of the Larceny Act, 1861, are incorporated with the Act by s. 12, *i.e.*, ss. 98, 99, 100, 103, 107—113, 115—121.

Railways.

Under 3 & 4 Vict. c. 97, railway authorities have ample power to deal with persons wilfully obstructing them in the execution of their duty, or trespassing on their premises and refusing to quit the same. Police can interfere if a breach of the peace is likely to occur, and they can take into their charge drunken persons or others handed over to them by the railway authorities (*x*).

By 3 & 4 Vict. c. 97, s. 13, and 5 & 6 Vict. c. 55, s. 17, engine drivers, guards, porters, or other servants of any railway company are liable to imprisonment for two months

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(*u*) See title Towns Police Clauses Act, p. 281, and also p. 254.

(*x*) In case of *Cobb* v. *Great Western Rail. Co.* (1893), 57 J. P. 258; the point was raised whether on allegation of passenger that he had been robbed the station-master was bound to stop the train. *Held*, to be no duty of company's servants.

or a penalty of 10*l.* if found drunk whilst employed upon the railway.

Regarding malicious (*y*) injuries to railways, engines, telegraphs, etc., see 24 & 25 Vict. c. 97, ss. 35 to 38, and see c. 100, ss. 32 to 34, Appendix, *post*, as to acts with intent to endanger passengers, etc. (*z*).

Police travelling by railway on duty are conveyed at special rates under the provisions of 46 & 47 Vict. c. 34 (Cheap Trains Act).

By s. 6 of the Cheap Trains Act, 1883, the charges for the conveyance by railway of officers and men of any police force, and of such of their families as are entitled to be carried at the public expense, are fixed at the following rates, viz.:—

When the number conveyed is less than 150, *three-fourths* of the fare charged to private passengers.

When the number is 150 or more, three-fourths for the first 150, and for the number in excess of 150 *one-half*.

To entitle members of police forces to conveyance at these rates they must—

(1.) Be travelling on duty on the public service, and

(2.) Produce at the commencement of the journey a route, duly signed.

Members of police forces should, when travelling by railway, be furnished with a warrant or voucher (*a*), to be left with the booking clerk as the authority for the issue of tickets at the reduced rates fixed by the Act.

Rape.

Rape.—See title Women and Girls. As to admissibility of statements, see *R.* v. *Lillyman* (C.C.R.), 65 L. J. M. C. 195; in that case the admissibility of evidence referred to was fully discussed and conflicting authorities reviewed.

Hawkins, J., in delivering the written judgment of the court, said, "The whole statement of a woman containing her alleged complaint should so far as it relates to the

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(*y*) The word "maliciously" extends to acts done by boys mischievously. *R.* v. *Gutteridge*, 15 J. P. 612.

(*z*) The practice of throwing stones from bridges at a passing train may come within this category.

(*a*) This can be drawn up in form used by the metropolitan police according to model given in Home Office Circular, dated 8th April, 1884. See Home Office Circulars, Appendix, *post*.

charge against the accused be submitted to the jury as a part of the case for the prosecution."

A statement to be admissible must be made as speedily after the acts complained of as can reasonably be expected.

Receivers.

The Larceny Act, 1861, contains provisions *re* criminality and trial of receivers of stolen property and also as to culpability of accessories: section 91 as to receivers in felonies; s. 95 in misdemeanors: s. 97 in summary offences; s. 99 as to accessories. See Larceny Act, Appendix, *post*.

An offender may be indicted and convicted either as an accessory (*b*) after the fact or for a substantive felony, and in the latter case whether the principal felon shall or shall not have been previously convicted or be amenable to justice (Larceny Act, 1861, s. 91).

As to burden of proof in cases of receiving, and power of search under authority of a chief officer of police, see Prevention of Crimes Act, ss. 16 and 19, *ante*.

In any indictment for stealing a count for "receiving" may be added and *vice versa* (Larceny Act, s. 92).

The trial for an offence under ss. 91 to 95 of Larceny Act shall be in any county or place in which the person charged shall have or shall have had any of the property in his possession, or in any place in which the principal felon may be tried (Larceny Act, ss. 96 and 114). For offence under Larceny Act, 1896, in any county or place in which the person charged has or has had the property (59 & 60 Vict. c. 52, s. 1) (Stone's Justices' Manual).

Reformatories.

(56 & 57 Vict. c. 48.)

If a youthful offender under sixteen years of age be convicted on indictment or summarily of an offence punishable with penal servitude or imprisonment, if he appear to the court to be not less than twelve years of age, or if it be

(*b*) If a husband, knowing that his wife has stolen goods, receives them from her, he may be convicted as a receiver (*R.* v. *McAthey*, 32 L. J. 35). As to feloniously receiving the goods of a husband taken away by his wife, see *R.* v. *Deer*, 7 L. T. 366; and *R.* v. *Kenny*, 41 J. P. 119; and title WIFE, *post*.

proved that he has been previously convicted of a serious offence, the court may order him to be sent to a certified reformatory school for not less than three and not more than five years, provided the period expire before offender attains age of nineteen.

Anybody wilfully neglecting or refusing to conform to the rules is liable to three months' imprisonment, and to a similar punishment for escape. Persons assisting an offender to escape or harbouring him are liable to fine or imprisonment.

Parent or guardian is liable to contribute 5*s*. per week towards the maintenance of offenders sent to reformatory or industrial school.

The police are required to comply with any order issued by the inspector of reformatory schools directing inquiry as to ability of parents or others liable to contribute towards expenses of offenders.

Rescue.

"Rescue" is the forcible liberation of another from legal custody. To constitute this offence the party must be in actual custody, though whether in that of a constable or private individual is not material, but in the latter case the party should know that the prisoner is in lawful custody, while in the former he is bound to take notice at his peril (1 Hale, 606); see "ARREST," *ante*, Chap. I.

Rescue of goods.—The forcible rescue of goods distrained and rescue of cattle by breach of pound are offences at common law and have been made the subject of indictment (Russell on Crimes, 6th ed., p. 882). If the taking be a mere trespass without violence it is not indictable. See also FORCIBLE ENTRY, *ante*, p. 7, Chap. I.

Restitution of Stolen Property.

The finder of lost goods has a good title to them against all the world except the true owner, although found within the shop of another person. *Bridges* v. *Hawksworth*, 18 L. T. 154.

Under the Larceny Act, s. 100, provision is made for the restitution of stolen property to the owner or his representative after the conviction of the offender, by means either of a writ of restitution or a summary order by the court.

By 30 & 31 Vict. c. 35, where after conviction it appears that the stolen property has been sold by the prisoner to an unknown third party, the court may order (on restitution of stolen property to prosecutor) that out of any moneys found on the prisoner an amount not exceeding the proceeds of such sale shall be delivered to the purchaser. Any person defrauded or injured by the committal of a felony may be awarded a sum not exceeding 100*l.* as compensation, the same to be deemed a judgment debt due from the person convicted (Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 4).

Property pawned.—By the Pawnbrokers Act, 1872, when the stolen property has been pawned with a pawnbroker the court may order its restitution to the owner either with or without payment to the pawnbroker of the amount of his loan on such property as the court may think fit (35 & 36 Vict. c. 93, s. 31). As to reward for return of property, see pp. 266, 267.

Note.—It must be noted that the owner of the property cannot proceed to recover his goods from the thief until he has prosecuted him. In the case of innocent third parties, the previous conviction of the thief is not a condition precedent to the recovery of the property (*Lee* v. *Bayes*, 20 J. P. 694; 18 Q. B. 599). See *Bullock* v. *Dunlap* as to immunity of police (Metropolitan) after acquittal of prisoner for detention of goods under justices' order (41 J. P. 56).

Market Overt.

Change of ownership.—When goods are sold in market overt according to usage of market the buyer acquires a good title to the goods provided he buys them in good faith and without notice of defect of title on part of seller (Sale of Goods Act, 1893, s. 22), but nothing in section is to affect law as to sale of horses. The ownership of stolen property is only changed by a sale in market overt (*White* v. *Spettigue*, 9 J. P. 76, and 22 J. P. 374). The court may make an order for restitution, and should the court refuse to do so the property (on conviction) will still revest in the owner (s. 24), who can recover in action of trover, but goods obtained by fraud will not revert (Stone's Justices' Manual).

Market overt is defined to be a fair or market held at stated intervals in particular places by virtue of a charter or

prescription. In the city of London every shop is by custom market overt except on Sunday with regard to the articles generally offered for sale therein. Pawnbrokers' shops are, however, excepted from the custom by a statute of James I.

The Crown is not barred of its right to restitution of stolen property even by a sale in market overt, nor will such a sale protect a purchaser who knew that the goods he bought were stolen.

The House of Lords held in 1875 (*Hollins* v. *Fowler*, 40 J. P. 53) that the owner could sue person detaining goods fraudulently taken, although innocently acquired from thief. The same rule was applied in *Lindsay* v. *Cundy*, (H. L. 26 W. R. 406; 47 L. J. Q. B. 481).

A conviction for false pretences on the prosecution by the owner revests the property in him notwithstanding the person who has the possession was a *bonâ fide* purchaser under a sub-contract or in market overt. *Bentley* v. *Vilmont*, 12 App. 471; 57 L. J. Q. B. 18; 52 J. P. 68.

By the Sale of Goods, Act, 1893, s. 28, it is enacted that where goods have been obtained by fraud not amounting to larceny, the property in such goods does not revest in the owner by *reason only of the conviction of the offender*. The effect of this is to apparently supersede the above decision, but the Queen's Bench Division having referred to s. 21 of the Act, which provided that nothing therein shall affect the Act, 1889, enabling an apparent owner to dispose of goods as if he were true owner, held that plaintiff could not recover possession of a piano from defendant, who had bought it of a person to whom plaintiff had sold it on the hire system, and who sold it without notice of plaintiff's right (*Payne* v. *Wilson* (1875), 43 W. R. 249).

Rewards.

To corruptly take any money or reward upon account of helping any person to recover any chattel, etc., stolen (unless all diligence be used to bring offender to trial) is felony. Larceny Act, 1861, s. 101.

To advertize (*c*) for return of stolen or lost property using

(*c*) See also Larceny Advertisement Act, 1870, when action is taken against printer, etc.

words purporting that no questions will be asked or inquiries made subjects offender to a penalty of 50*l.* (Larceny Act, s. 102).

Reward for information.—Where a reward is offered for "such information as will lead to the apprehension" of a felon, *a police constable* to whom the felon has voluntarily offered to surrender himself is not entitled to the reward (*Bens* v. *The Wakefield and Barnsley Union Bank*, L. R. 4 C. P. D. 1; 43 J. P. 55). As to information leading to the "apprehension of the offender" so as to entitle to recover the reward, see *Turner* v. *Waller*, 2 L. R. Q. B. 301; 36 L. J. Q. B. 236; 51 J. P. 594; see also *Gibbons* v. *Proctor*, 55 J. P. 617.

Riots, &c.

A Riot (*d*) is a tumultuous disturbance of the peace by three or more persons assembled together with intent to assist each other in the execution of some act which they afterwards actually execute. The offence is a *misdemeanor*. A "rout" is where they proceed to execute the act but do not execute it. If they assemble with riotous intent but do not proceed to action it is an "unlawful assembly" only.

A lawful assembly is not rendered unlawful by reason of the knowledge of those taking part in it that opposition will be raised to it, which may give rise to a breach of the peace. A meeting is not made unlawful by a proclamation issued by magistrates prohibiting it. There is no legal authority for such notice.

Salvation Army.—Regarding riots in connection with meetings of the "Salvation Army," cases in point are fully set out in Stone's Justices' Manual, 29th ed., under heading RIOT.

In *Beatty* v. *Gillbanks*, 51 L. J. 117; 46 J. P. 789, the Queen's Bench Division held that magistrates had no authority to prohibit a meeting; that an assembly not designed to commit an unlawful act was perfectly legitimate.

The legality of the processions of the Salvation Army was raised in *McClenaghan and others* v. *Waters* (July 17th, 1882).

Anticipating disturbances *the chief constable of county* caused a notice to be printed and posted at Whitchurch, in Hampshire, prohibiting processions of the army. The processionists came into collision with the

(*d*) The fighting of two or more persons to the terror of the Queen's subjects may constitute an "affray." See title AFFRAY, p. 270, *post*.

police, and a technical assault occurred. The parties were prosecuted under Prevention of Crimes Act (s. 12). On appeal it was held that appellants had been doing only an act strictly lawful.

At Norwich Assizes, February, 1883, FIELD, J., said with reference to processions of Salvation Army: The law upon the matter was very plain and simple. No one had a right to disturb the public peace, but everybody had a right to pursue a lawful object by lawful and quiet means, and in doing that peaceably and without offence to anybody, or without causing a nuisance, no one had a right to interfere; but if flags and banners or noisy musical instruments were used, the roadway obstructed, and people annoyed, however right the object, the thing carried to that extent was unlawful.

As to similar cases at Eastbourne (contrary to Local Improvement Act), see *R.* v. *Clarkson and others*, 56 J. P. 375.

The remedy for noisy nuisances and disturbances in the public streets appears to be by indictment for a public nuisance, but a prosecution against Mr. Herbert Booth, of the Salvation Army, for disturbances at Whitechurch failed. The decision of the late Lord COLERIDGE, L.C.J., in this important case is fully set out in Stone's Justices' Manual, 29th ed., p. 858.

In places where a sufficient local byelaw is in force the nuisance may be dealt with summarily. *Gay* v. *Powell*, 51 L. T. 92: *R.* v. *Powell*, 48 J. P. 740.

An injunction was granted at the county court at Chester (September, 1883), against noisy meetings of Salvation Army in building in street, causing annoyance to persons living in the neighbourhood. *Fleet* v. *Johnson*, 75 L. T. 383. See also THE SALVATION ARMY, 48 J. P. 659.

Military.—Military force cannot be called into requisition unless it is evident that the constabulary force is inadequate. The military may, however, be requested to hold themselves in readiness if required, and such a course if taken and known will frequently prevent an outbreak. The Queen's Regulations (clauses 50 to 63) define the duties of troops when thus called out. A magistrate must accompany troops.

The commission on the Featherstone riots reported to the House of Commons, December, 1893, "An order from the magistrate who is present (to fire) is required by military regulations, and wisdom and discretion are entirely in favour of the observance of such a practice. But the order of the magistrate has no legal effect. Its presence does not justify the firing if the magistrate is wrong. Its absence does not excuse the officer for declining to fire when the necessity exists" (38 Sol. J. 106) (Stone's Justices' Manual, 29th ed.).

Wrecks.—If a vessel wrecked or stranded be plundered by persons riotously assembled, damages are recoverable in same manner as under the Riot (Damages) Act, 1886 (Merchant Shipping Act, 1894).

Riot Act.

The statute 1 Geo. 1, stat. 2, c. 5, known as the Riot Act, contains the following proclamation, which is to be read aloud by a magistrate, sheriff, sub-sheriff, or mayor in the presence of the rioters after silence commanded.

Proclamation.—"Our Sovereign Lady the Queen chargeth and commandeth all persons being assembled immediately to disperse themselves and peaceably to depart to their habitations or their lawful business upon the pains contained in the Act made in the first year of the reign of the late King George the First for preventing tumultuous and riotous assemblies. 'God save the Queen.'"

The proclamation can only be read when *twelve or more persons* are "unlawfully, riotously, and tumultuously assembled together to the disturbance of the public peace." Should the persons commanded to disperse continue together for one hour after the reading of the proclamation they shall be guilty of *felony*. The police can arrest such persons and take them before a justice.

Public-houses may be closed by order of two justices during a riot or if a riot be anticipated (Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 23).

As to appointment of special constables, see p. 49, *ante*.

Special constables in boroughs.—The special constables appointed in October in every year may be called upon to (*c*) act by the warrant of a justice having jurisdiction in the borough, but not otherwise; such warrant reciting that, in his opinion, the ordinary police force of the borough is insufficient at that time to maintain the peace of the borough (45 & 46 Vict. c. 50, s. 196).

Where the civil power is insufficient to suppress a riot the military may be called upon by the magistrates to act, a *written* application being sent to the officer in command.

Rioting.—On the occasion of any sudden riot occurring in a town or village, which the police force on duty at the time may not be strong enough to suppress, and where a forcible interference might be deemed imprudent, the police should endeavour by their influence with the people

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(*c*) As to the power to require county police constables to render them assistance, see Police (County and Borough) Act, 1859 (22 & 23 Vict. c. 32), also Police Act, 1890, s. 25.

to restore order. They should also take notice of those persons who appear to be ringleaders, in order that proceedings may be afterwards instituted against them if necessary.

Affrays.—An affray is the fighting of two or more persons in some public place, to the terror of the Queen's subjects, for if the fighting be in private it is not an affray but an assault. It differs from a riot in not being premeditated, and also two persons may be guilty of an affray, but it requires three or more to constitute a riot. The offence is a misdemeanor.

Compensation for Losses by Riot.
(49 & 50 Vict. c. 38.)

By the Riot (Damages) Act, 1886, claim for compensation for damage done to a house, shop, or building, or the property therein in counties, must be made to justices in general or quarter sessions, and in boroughs to the town council; but by the Local Government Act, 1888 (s. 5), any matters arising under the Act are transferred from the justices to the county council.

Where a claim to compensation has been made in accordance with regulations to be made under the Act by the Secretary of State, a right of action is given to the person aggrieved.

If the amount claimed does not exceed 100*l.* the action must be brought in the county court. See regulations made by Secretary of State, January 30th, 1894.

Growing crops, corn in stacks, or other property not being a house, etc., or within a house, are not embraced by the Act. If the loss is covered by insurance the amount obtained must be deducted from claim (Extract from Stone's Justices' Manual).

Sacrilege.

Every one commits felony who breaks and enters any church, chapel, meeting-house, or other place of Divine worship, and commits any felony therein, or being in any church, chapel, meeting-house, or other place of Divine worship, shall commit any felony therein, and break out of of same (s. 50). Punishment—penal servitude for life or not less than three years, or imprisonment not exceeding two years (24 & 25 Vict. c. 96, s. 50). [The offence is not triable at sessions.]

Whosoever shall break and enter any such place with intent to commit any felony therein is guilty of felony (s. 57).

It is equally sacrilege to break into or steal in a Dissenting meeting-house as in a church.

Seamen.

32 & 33 Vict. c. 57, imposes penalties on persons purchasing seamen's property (defined in Act) in certain dockyard towns.

Sedition or Treason Felony.

Sedition may be either by writing or by words spoken. The offence consists in endeavouring to vilify or degrade the Queen in the esteem of her subjects, or to create discontent or disaffection, or to incite the people to tumult, violence, and disorder, or to bring the Government or Constitution into hatred and contempt, or to effect any change in the laws by the recommendation of physical force. Seditious meetings are such as are held for the purpose of accomplishing any of these objects, and those taking part in them are equally guilty with the promoters of same, but the legality of public meetings depends very much on the concomitant circumstances, as the people have an undoubted right to meet and assert their opinions and discuss their grievances or supposed wrongs. A meeting calculated to endanger the peace or excite terror is an "unlawful assembly." See RIOTS. See also TREASON FELONY ACT, 1848 (11 Vict. c. 12).

Servants. See MASTER AND SERVANT, p. 231, *ante*.

Shop Hours Regulation Act. See p. 146.

Suicide.

The attempt to commit suicide is an indictable misdemeanor at common law. Offenders may be committed for trial at assizes or quarter sessions. The police should keep a watch upon the movements of offenders whilst in custody lest they should again attempt to destroy themselves. If necessary a doctor should be called in (*f*).

If two persons agree to commit suicide together, and one

(*f*) As to poison and antidotes see Appendix, *post*.

of them, in pursuance of a common design, effects the object, the survivor will be guilty of murder (*May's Case*, November, 1872).

The Interments (*felo de se*) Act, 1882 (45 & 46 Vict. c. 19), provides that a body may be buried in any way authorized by the Burial Laws Amendment Act, 1880, with or without religious service. The statute 4 Geo. 4, c. 52, is repealed, which permitted burial between nine and twelve at night without religious rites; the custom of burial at cross roads with stake through body was abolished 1823.

Summary Jurisdiction.

The procedure of justices in cases of Summary Jurisdiction is regulated by the Summary Jurisdiction Act, 1848 (*g*), extended and amended by the Acts of 1879 and 1884 (*h*). An abridgment of the sections of the Acts is given under heading SUMMARY JURISDICTION (Appendix), *post*. See also title INDICTABLE OFFENCES ACT, 1848 (General Subjects), *ante*.

For purposes of Acts persons charged with indictable offences are classified as "Adults," "Young Persons," and "Children." See s. 49, Summary Jurisdiction Act, 1879.

Summons.—The Summary Jurisdiction Act of 1848 (s. 1) empowers justices to issue summons on information laid or complaint made. For procedure as to "service of summons" see Chap. II., p. 12, *ante*.

Warrant.—Section 2 of Act provides for issue of warrant if summons be not obeyed, or issue of warrant in first instance if desirable.

Forms of warrant—"backing" of same—execution of warrant, and apprehension in case of "fresh pursuit," are treated of under s. 3 of Act. See also title WARRANTS (General Subjects), *post*.

As to arrest without warrant and discharge on bail by police officer, see s. 38, Act of 1879; also titles ARREST, p. 7, and BAIL, p. 83.

Further provisions as to boroughs and bail by constable

(*g*) 11 & 12 Vict. c. 43, known as "Jervis'" Act.
(*h*) 42 & 43 Vict. c. 49; and 47 & 48 Vict. c. 43.

taking charge, etc., are contained in s. 227 of Municipal Corporations Act, 1882, amended by Summary Jurisdiction Act, 1884.

Witness.—As to enforcing attendance of witnesses *within* jurisdiction, see s. 7, Summary Jurisdiction Act, 1848; and *without* jurisdiction, s. 36, Act of 1879; and see s. 7, Act of 1848, as to witnesses refusing to be examined.

Trial by jury.—See s. 17 of Summary Jurisdiction Act, 1879, as to claim by accused to be tried by jury in certain cases.

Hearing.—Cases are to be heard in *open court* (Summary Jurisdiction Act, 1848, s. 12). "Open court" means a petty sessional court house or an occasional court house. See Summary Jurisdiction Act, 1879, s. 20, as to appointment of police station or other place as an occasional court-house; places so appointed become "open courts" from which the public cannot be excluded (*i*). A limitation as to punishment attaches as to cases heard in occasional court house or before one justice.

Remand.—Section 16, Summary Jurisdiction Act, 1848, relates to remands (*k*), under the Prevention of Crimes Act, 1871, any person may be remanded for purposes of police inquiry (s. 17).

Appeal.—Section 33, Summary Jurisdiction Act, 1879, as to appeal, special case, etc.

Open court.—The hearing of an information or complaint must be in open court (Summary Jurisdiction Act, 1848, s. 12, and s. 20, Act of 1879). Sir Richard Webster (when Attorney-General) advised (*l*) that justices have no power to exclude the general public provided they do not interrupt the proceedings, but they may exclude a particular portion of the public such as women and children where evidence is of an indecent character. Courts of quarter sessions are

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(*i*) As to irregularity or illegality at "Hearing," see p. 274.

(*k*) See also Indictable Offences Act, 1848, s. 21, as to remand for *eight days* "by warrant" or for *three days* "verbally." See also "Statutory Provisions," Appendix, *post*.

(*l*) In an opinion given the County Brewers' Society, January, 1890.

similarly situated. In the event of justices or a court of quarter sessions ordering the public to be excluded, action could be maintained against officer ejecting and the magistrate ordering same. In hearing cases magistrates are sitting as a court of justice and are exercising judicial functions, and therefore, except under the special circumstances above mentioned, their proceedings ought not to be private but public.

Hearing.—An irregularity or illegality in the mode of bringing a defendant before the justices, if not objected to at the hearing, does not affect the validity of the conviction (*Gray* v. *Commissioners of Customs*, 48 J. P. 343). Various authorities are cited in Stone's Justices' Manual in support of this proposition. A leading case on the subject is *R.* v. *Hughes*, 4 Q. B. D. 614; 40 L. T. 685; 43 J. P. 556.

Sunday Observance Act.

(29 Car. 2, c. 7.)

This Act, passed in the reign of Charles 2 (1676), enacts that no drover, butcher, or waggoner, shall travel or come to his inn on the Lord's Day (*m*), forfeiture 20*s.*; and no tradesman (*n*), artificer, workman, labourer, or other person whatsoever, 14 years of age or upwards, is to do or exercise any worldly labour, business, or work of his ordinary calling upon the Lord's Day (works of charity or necessity excepted). Forfeiture, 5*s.* in each case, leviable by distress; and if no sufficient distress, the offender may be committed to the stocks for two hours (29 Car. 2, c. 7, ss. 1 and 2).

The costs may be included in the conviction and levied by distress under Summary Jurisdiction Act, 1848, s. 18, but it is doubtful whether justices can order imprisonment in default of distress. The offender cannot be put in the stocks for non-payment of costs. *R.* v. *Barton*, 18 L. J. 56.

(*m*) The rigid enforcement of this part of the Act might lead to embarrassment, without an alteration in the market days of large provincial towns.

(*n*) The question as whether a barber came within the words of the Act was raised in *Thorpe* v. *Priestnall* (1896), 60 J. P. 821; but the conviction was quashed on another point.

To publicly cry (*o*), show, or expose for sale any wares, fruit, goods, etc., on the Lord's Day renders the seller liable to forfeiture of the goods; but by s. 3 of Act milk can be sold before 9 A.M. or after 4 P.M.; and 10 & 11 Will. 3, c. 24, s. 14, authorizes the crying or selling of mackerel before or after Divine service. There is no prohibition to the dressing of meat in families, inns, cookshops, or victualling houses on Sundays. 6 & 7 Will. 4, c. 37, s. 14, regulates Sunday baking.

There shall be no meetings, assemblies, or concourse of people out of their own parishes on the Lord's Day for any sports and pastimes whatsoever, nor any bear-baiting, bull-baiting, interludes, common-plays or any unlawful (*p*) exercises and pastimes used by any person or persons within their own parishes. Every offender is to forfeit for every offence 3*s*. 4*d*. to be employed for the use of the poor of the parish, to be recovered by distress (3 Car. 1, c. 5); in default of distress imprisonment (Summary Jurisdiction Act, 1848).

Procedure.—Prosecution must be commenced within ten days before one justice (29 Car. 2, c. 7, s. 4). By 34 & 35 Vict. c. 87, s. 1, no prosecution can be commenced *without the consent in writing of the chief officer of police* (*q*) *or of two justices*. Such justices cannot adjudicate in the case. As to—

Arrests on Sunday, see p. 8, *ante;*
Issue of warrants on Sunday (*r*), see WARRANTS, p. 302;
Shooting game on Sunday, see title GAME, *ante;*
Closing public-houses on Sunday, see p. 209;
Playing billiards on Sunday, see title BILLIARDS, *ante*.

(*o*) A boy was proceeded against at Brighton for crying newspapers, May (1890), and an order was made for forfeiture of papers (L. J. Notes (1890), p. 292).

(*p*) This seems to refer to sports *ejusdem generis* with bear-baiting. In the absence of any local statutory restriction playing such games as cricket on a Sunday appears not to be illegal within people's own parishes, but a cricket match played between two parishes would be illegal, since one of the contesting elevens would necessarily walk or ramble out of their own parish (Stone's Justices' Manual, 29th ed.).

(*q*) Consent must be obtained before information is laid.

(*r*) It was held in *R.* v. *Myers* (1 T. R. 265) that it was illegal to execute on Sunday a warrant of commitment for a penalty (Sunday Observance Act).

Sureties of the Peace.

To keep the peace.—It is laid down (*s*) that wherever a person has just cause to fear that another will do him some bodily harm, as by killing or beating him, he may demand surety of the peace against such person.

Binding over a person to keep the peace is not in the nature of a punishment, but is to prevent the apprehended danger of a breach of the peace. The procedure is now regulated by the Summary Jurisdiction Act, 1879, s. 25.

To be of good behaviour.—Legal authorities are not agreed as to all the offences for which this surety may be required. It is more comprehensive than the surety of the peace, as good behaviour includes the peace (30th ed. BURN'S J., vol. v., p. 754). It cannot be required for merely rash, quarrelsome, or unmannerly words, unless they tend to a breach of the peace, or to scandalize the Government by abusing those who are entrusted with the administration of justice, or to deter an officer from doing his duty. It may in some cases be required in cases of libel against private individuals. See *Haylocke* v. *Sparke*, 22 L. J. 67. This case was discussed in the Common Pleas Division on application for *certiorari* by an ex-policeman, who, having been dismissed from the force, seized every opportunity of using insulting and injurious language about and towards the chief constable, and was committed for six months in default of finding sureties to be of good behaviour. Lord COLERIDGE, L.C.J., held that a condition precedent was an oath by the applicant that he went in bodily fear. The applicant swore he apprehended a breach by *himself* unless the defendant was bound over, but the converse was the condition necessary. *Phillips* v. *JJ. Gateshead*, *Times*, July 15th, 1879; see *Law Times*, July 19th, 1879; see also *Haslam* v. *Shaw*, Q. B. D. December 8th, 1882, noted in *Times*. There is therefore really no law by which the offender can be summarily punished for mere insulting language, unaccompanied by threats (Stone's Justices' Manual, 29th ed. p. 884).

(*s*) Hawk. P. C. 5th Book, c. 60, s. 6.

Swearing.

By an Act passed in the reign of Geo. 2 (19 Geo. 2, c 21) any person profanely cursing or swearing is liable to money penalties on conviction before one justice, varying according to the offender's degree and position.

Penalty for labourer, soldier, sailor, or seaman, 1s.; for any other person under the degree of a gentleman, 2s.; of and above degree of gentleman, 5s.; in default imprisonment not exceeding ten days. If proceedings be taken the information must be upon oath, and laid within *eight* days. Constables may seize offenders if unknown, and take them before a justice, who can convict on oath of officer. The Act does not appear to apply to women.

Telegraphs.

By the Telegraph Act, 1868, any person connected with the post office contrary to his duty disclosing or in any way making known or intercepting the contents of any message entrusted to the Postmaster-General is guilty of a misdemeanor. Punishment, imprisonment for twelve months. See also Telegraph Act of 1869.

Persons injuring telegraph wires, posts, etc., are guilty of a misdemeanor. See 24 & 25 Vict. c. 97, ss. 37, 38. See APPENDIX, *post*. See also under title *Post Office Offences*, *ante*, p. 245.

Theatres.

The business of justices out of sessions in respect of the licensing of houses or places for the public performance of stage plays has been transferred to the county council by the Local Government Act, 1888, s. 7. The council may delegate their powers to the justices *in petty sessions*, or to a committee of the council, or to a district council.

The Theatres Act, 1843 (6 & 7 Vict. c. 68), contains special provisions as to the grant of these licences by justices. Applications have to be in writing, signed by the party making them, and countersigned by at least two justices (or councillors), who are required within 21 days to hold a special session (or meeting) for the purpose, *seven* days' previous notice being given (s. 5). The licence is to be granted to the actual and responsible manager, and must be

under the hands and seals of at least four of the justices (or councillors) present, and must be signed and sealed in open court (or meeting), and publicly read by the clerk.

The justices (or council) are empowered to make rules for insuring order and to bind over the manager in a sum not exceeding five hundred pounds, and two approved sureties for due observance. The fee for licence is not to exceed five shillings for each calendar month during which the theatre is licensed. Penalty for performing or permitting play to be performed in unlicensed place, 10*l.* (s. 11), and any person keeping an unlicensed place (*t*) is liable to a penalty of 20*l.* a day (s. 2). Every person acting for hire in any play which has not been allowed or has been disallowed by the Lord Chamberlain is liable to a penalty of 50*l.* (s. 15). Acting for hire means acting where any money is taken directly or indirectly for admission, or where the play is performed in any place in which distilled or excisable liquor is sold (s. 16). In any proceeding the burden of proof that the theatre is licensed, etc., lies on the party accused (s. 17). Penalties recoverable before two justices or by action—imprisonment in default of distress (s. 19). Appeal to *next* general or quarter sessions (s. 20). Part penalties can be applied towards payment of prosecutor's expenses. Proceedings must be taken within *six calendar months* after the offence is committed.

Interpretation.—The word "stage play" shall be taken to include every tragedy, comedy (*u*), farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage or any part thereof. The Act does not apply to any theatrical representation in any booth (*x*) or show

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(*t*) Army and Navy recreation rooms are exempted.

(*u*) A "dialogue" between two persons in costumes and characters is within section (*Thorne* v. *Colson*, 25 J. P. 101); and see *Dey* v. *Simpson* (Pepper's Ghost), 12 L. T. 386. Whether a performance is or is not a stage play seems to be a question of fact. "Sketches" at music halls are "stage plays."—Lord Chamberlain's Circular, 1894 (58 J. P. 369). [An amendment of this Act is much required. See Stone, p. 888.]

(*x*) A tent or booth used by strolling players is not a "place of public resort," as defined in s. 2 of Act (*Bary* v. *Douglas*, 28 L. J. 193); but a booth used as a temporary theatre is a "place" within s. 11 (*Tarling* v. *Fredericks*, 38 J. P. 109). A single entertainment or even occasional use of room for music or dancing (p. 233) appears permissible. See *Gregory* v. *Jupp*, and *Syers* v. *Conquest*, 37 J. P. 342.

allowed by the justices, etc., in any lawful fair, feast, or customary meeting of the like kind (s. 23). The Act extends only to Great Britain (s. 24).

Provincial Theatres.

Keeping order, etc.—The Towns Police Clauses Act, 1847 (10 & 11 Vict. c. 89), which is by s. 171 of the Public Health Act, 1875, rendered applicable to all urban sanitary districts, empowers by s. 21 commissioners (*i.e.*, the local authority) to give directions to constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort; and a wilful breach of such order is to be an offence, and is subject to a penalty not exceeding 40s. (*Vide* Geary's Law of Theatres and Music Halls, p. 30.)

By s. 9 of the Theatres Regulation Act (6 & 7 Vict. c. 68) the County Council have power to make rules for enforcing order, etc., at the theatres licensed by them.

As to powers of arrest in cases of disturbance, see *Clifford* v. *Brandon* (2 Camp. 369). It is not necessary that personal violence should have been committed. *Lewis* v. *Arnold*, 4 C. & P. 354.

Threats—Threatening letters, &c.

Demanding money or property, etc., from any one by menaces or by force is felony, as is also the accusing or threatening to accuse any person of infamous or abominable crime with the view of extorting money, property, etc. Sending, etc., a letter threatening to murder or to burn or destroy any property, or to accuse of crime or to demand money, etc., with menaces is felony.

See as to above offences, 24 & 25 Vict. c. 96, ss. 44 to 47; 24 & 25 Vict. c. 97, s. 50; and 24 & 25 Vict. c. 100, s. 16. See Appendix *post*.

Threshing and Chaff Cutting Machines.

By 41 Vict. c. 12, it is enacted that in order to prevent accidents the drum and feeding mouth of all threshing machines shall during the working of such machines be kept sufficiently and securely fenced, so far as is reasonably practicable and consistent with due and efficient working.

The person to whom the machine belongs, or for whose service and benefit it is used, is to be deemed to have permitted the offence, unless he satisfies the court that he took all reasonable precautions to ensure observance of the Act. Police, on reasonable cause, may at any time enter premises to inspect machine.

Somewhat similar provisions operate *re* chaff cutting machines under Act of 1897 (60 & 61 Vict. c. 60), (to operate August, 1898).

Towns Improvement Clauses Act.

(10 & 11 Vict. c. 34.)

Certain offences contained in the Towns Improvement Clauses Act, 1847, are incorporated with the Public Health Act, 1875 (s. 160, 169). They are now in force in every urban sanitary district, and may be applied by the Local Government Board (under s. 276) to rural sanitary districts. Proceedings can only be taken by officers appointed under s. 253 of the Public Health Act, 1875, p. 261.

Offences.

1. Defacing numbers, etc., on houses or names of streets, etc. Penalty, 40*s.* (s. 64).

2. Occupier failing to renew, etc., numbers if required by local authority. Penalty, 40*s.*

3. Occupier or owner failing to remove after due notice any projection, etc., erected or placed, after the application of the Act, against or in front of any house or building, and which is an obstruction to the safe and convenient passage along any street. Penalty, 40*s.* (s. 69).

4. Failing to alter when required by local authority any door, gate, or bar opening outwards on street. Penalty, 40*s.* (s. 71).

5. Occupier neglecting to keep in repair cellar covering in any pavement or footpath. Penalty for neglect, 5*l.* (s. 73).

6. Occupier of house in or adjoining street is required, on notice from local authority, to put up shoot or trough to prevent water falling on persons passing along street or flowing over footpath. Penalty, 40*s.* for every day's default (s. 74).

7. Sections 75 to 78 of Act define course to be pursued to compel owners to take down ruinous or dangerous buildings.

8. Any person altering or removing any bars or chains, lights put up by local authority during repairs of streets, etc. Penalty, 5*l.* (s. 79).

9. Failing to put up sufficient fence or hoard platform with rail, etc., during erection or repair of any building, or failing to keep same sufficiently lighted at night. Penalty 5*l.* (s. 80). Where Part III. of the Public Health Acts Amendment Act, 1890, has been adopted other and additional regulations are substituted.

10. Unlicensed slaughter-houses. Penalty, 5*l*. (s. 126). Further provisions as to slaughter-houses (licences) apply in cases where the Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59, ss. 22 to 31), has been adopted.

11. Section 131 of Act deals with unwholesome meat, but inasmuch as unwholesome meat can be dealt with under 38 & 39 Vict. c. 55, s. 16 (Public Health Act, 1875), which statute extends to poultry, fish, and other kinds of food, prosecutions are usually carried out under that statute. See title PUBLIC HEALTH ACT, *ante*. As to consumption of smoke, see s. 109 of Towns Improvement Clauses Act, which is not incorporated with the Public Health Act, 1875; also s. 91 of that statute as to consumption of smoke in places to which that Act applies.

Towns Police Clauses Act, 1847.

(10 & 11 Vict. c. 89, and 52 & 53 Vict. c. 14, 1889.)

Certain offences contained in the Towns Police Clauses Act are incorporated in the Public Health Act, 1875, under s. 171 of that Act. They are in force in every urban sanitary district, and may be applied to rural sanitary authorities.

The police can enforce the provisions of the Act if appointed officers by the local board. As already stated, some of the provisions of the Act regarding obstructions, nuisances, etc., are incorporated in the Public Health Act, 1875; but although such provisions can be enforced by the police in some urban districts, it is questionable whether they can be carried out in places where local boards exist except by officers appointed by the boards, inasmuch as s. 253 of the Public Health Act restricts the proceedings for recovery of penalties to the person aggrieved and to the local authority. *Kyle* v. *Barber* (*y*).

As, however, many of the offences mentioned in the Towns Police Clauses Act are also offences under the Vagrant Act, the Highway Acts, and the Licensing Act, 1872, offenders can frequently be dealt with under these Acts without reference to local boards.

Obstructions in streets.—The local authority may from time to time make orders for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets in all times of public processions, rejoicings, or illuminations, and in any case when the streets

(*y*) This case is referred to at p. 254, *ante*, but see now under head of PROCEDURE, p. 288, *post*, and letter of Secretary of State advising that offences under s. 28 of Act (pp. 283 to 288) stand on a different footing.

are thronged, liable to be obstructed, and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort. Penalty for every wilful breach of any order not exceeding 40s. (10 & 11 Vict. c. 89, s. 21); and the like penalty is imposed for breach of any order regulating the route of carriages, etc. during Divine service at any specified place of worship (s. 22).

Impounding cattle.—If any cattle be at any time found at large in any street within the limits of the special Act without any person having the charge thereof, any constable or officer of police, or any person residing within the limits of the special Act, may seize and impound such cattle in any common pound within the said limits or in such other place as the local authority appoint for that purpose, and may detain the same therein until the owner thereof pay to the local authority a penalty not exceeding 40s., besides the reasonable expenses of impounding and keeping such cattle (s. 24).

If the said penalty and expenses be not paid within three days after such impounding the pound keeper or other person appointed by the local authority for that purpose may proceed to sell, or cause to be sold, any such cattle; but previous to such sale seven days' notice thereof shall be given to or left at the dwelling-house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement, to be inserted seven days before such sale in some newspaper published or circulated within the limits of the special Act, and the money arising from such sale, after deducting the said sums and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping, and sale of any such cattle so impounded, shall be paid to the local authority, and shall be by them paid, on demand, to the owner of the cattle so sold (s. 25).

Pound breach.—Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this special Act, or who pulls down, damages, or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence before any two justices, be committed by them to some common gaol or house of correction for any time not exceeding three months (s. 26).

Power to provide pound.—The local authority may purchase a piece of land within the limits of the special Act for the purpose of a pound for stray animals, and may erect a pound thereon, and such pound when made shall be kept in repair by the local authority (s. 27).

Various Nuisances in Streets (Section 28).

Every person who in any street (*z*), to the *obstruction* (*a*),

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(*z*) "Street" includes any road, square, court, alley and thoroughfare or public passage (s. 3), but does not include a spot from which the public may be shut out by the owner of the soil. *Curtis* v. *Embery*, 42 L. J. 39.

(*a*) In *Innes* v. *Newman* it was held (Q. B. D.) that annoyance of *one inhabitant* by crying papers in street was sufficient to justify a conviction under a bye-law (58 J. P. 543).

annoyance, or danger of the residents or passengers (*b*), commits any of the following offences shall be liable to a penalty not exceeding 40*s.* for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days, and any constable or other officer appointed by virtue of this or the special Act (*c*) shall take into custody, without warrant, and forthwith convey before a justice any person who within his view commits any such offence.

Exposing animals, etc.—Every person who exposes for show, hire, or sale (except in a market or market-place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises, trains, or breaks, or turns loose any horse or animal, or makes or repairs any cart or carriage (except in cases of accident, where repair on the spot is necessary).

Dogs.—Every person who suffers to be at large any unmuzzled ferocious dog (*d*), or sets or urges any dog or other animal to attack, worry, or put in fear any person or animal.

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or any other animal in a rabid state.

Every person who, after public notice given by any justice directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice.

Slaughtering cattle.—Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot.

Carts, etc.—Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof, or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage as not to have due control over every animal drawing the

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(*b*) These words govern the whole of the section. Several of the offences mentioned in this Act are punishable under the Highway, Vagrant, and other Acts.

(*c*) See POLICE REGULATIONS, p. 261. The Home Secretary has advised that in view of s. 253 of the Public Health Act, 1875, only an officer of the urban sanitary authority can prosecute for offences other than those in s. 28 of this statute, but the case is different as regards s. 28. See p. 288, *post* (58 J. P. 483).

(*d*) Two bites from a dog in the presence of the owner of the dog within half-an-hour are sufficient to prove *scienter* and to render the second bite actionable. *Parsons* v. *King*, *Times*, December 2nd, 1891, 36 Sol. J. 36.

same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, or who, in passing any other carriage, does not keep his waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who by obstructing the street wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care.

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet (*e*).

Furious driving.—Every person who rides or drives furiously any horse or carriage (*f*), or drives furiously any cattle.

Obstruction.—Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages and horses and other beasts of draught or burden standing for hire in any place appointed for that purpose by the commissioners, or other lawful authority), and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal *or other means* (*g*), wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare.

Timber carts, etc.—Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage without having sufficient means for safely guiding the same.

Riding, etc., on footway.—Every person who leads or rides any horse or other animal, or draws or drives any cart, carriage (*h*), sledge, truck, or barrow upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway.

Projections, etc.—Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, pail, or bucket, or places or uses any standing place, stool, bench, stall, or show-board on any footway, or who places any blind, shade, covering, awning, or other projection over

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(*e*) See title HIGHWAYS, *ante*.

(*f*) A bicycle was declared to be a carriage under s. 78 of the Highway Act. *Taylor* v. *Goodwin*, L. R. 4 Q. B. D. 228; 27 W. R. 189; 43 J. P. 653. And see now s. 85 of the Local Government Act, 1888, by which bicycles, velocipedes, and other similar vehicles are declared to be carriages for the purposes of the Highway Acts.

(*g*) In *R.* v. *Long and others* (52 J. P. 630), the Q. B. D. quashed a conviction against persons charged with obstruction by walking three abreast on pavement, but the decision does not extend to the Highway Act, which contains a general clause (s. 72) providing for persons who "in any way wilfully obstruct the free passage of any highway."

(*h*) It would seem from BYLES', J., instructions to the jury in *R.* v. *Matthias*, 2 F. & F. 570, that a perambulator is not a carriage (Stone, 29th ed., p. 896).

or along any such footway unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground.

Every person who places, hangs up, or otherwise exposes to sale (*i*) any goods, wares, merchandise, matter or thing whatsoever so that the same project into or over any footway or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway.

Rolling hoops, casks, etc.—Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway.

Hanging clothes.—Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon.

Prostitutes.—Every common prostitute or night-walker loitering and importuning passengers for the purposes of prostitution (*k*).

Exposing person.—Every person who wilfully and indecently exposes his person (*l*).

Obscene prints, etc.—Every person who publicly offers for sale or distribution, or exhibits to public view any profane, indecent (*m*), or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language.

Fireworks.—Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework (*n*).

Ringing bells.—Every person who wilfully and wantonly disturbs any inhabitant by pulling or ringing any door-bell, or knocking at any door, or who wilfully and unlawfully extinguishes the light of any lamp.

Kites, slides, etc.—Every person who flies any kite, or who makes or uses any slide upon ice or snow.

Cleansing casks, etc.—Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime.

Shooting rubbish, etc.—Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials

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(*i*) *R.* v. *Wigan*, 43 J. P. 220. In *Whittaker* v. *Rhodes*, 16 J. P. 182, a draper prosecuted (under local Act) for exposing goods on a grid outside shop unsuccessfully set up a claim of right as owner of soil and as "custom" for thirty years.

(*k*) See also title VAGRANTS, *post*.

(*l*) The offence under this section is complete without "intent to insult a female," as under Vagrant Act. See title VAGRANTS, *post*.

(*m*) See Indecent Advertisements Act, *ante*, p. 188.

(*n*) See now Explosives Act, title EXPLOSIVES, *post*; also 39 J. P. 564

(except building materials so enclosed as to prevent mischief to passengers).

Beating carpets, mats, etc.—Every person who beats or shakes any carpet, rug, or mat (except door mats beaten or shaken before the hour of eight in the morning).

Flower-pots.—Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window without sufficiently guarding the same against being blown down.

Throwing from roof.—Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger.

Cleaning windows, etc.—Every occupier of any house or other building, or other person, who orders or permits any person in his service to stand on the sill of any window in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story.

Vault or cellar unprotected.—Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto.

Throwing off offensive matter.—Every person who throws or lays any dirt, litter, or ashes, or night-soil, or any carrion, fish, offal, or rubbish on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill into any street: Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases.

Pigstyes.—Every person who keeps any pigstye (*o*) to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street so as to be a common nuisance.

SECTIONS 29, 31, 34, 35, 36.

Drunkenness (*p*).—Every person drunk in any street, and guilty of any riotous or indecent behaviour therein, and also every person guilty of any violent or indecent behaviour in any police office or any police station-house, within the limits of the special Act, shall be liable to a penalty not exceeding 40*s.* for every such offence, or, in the discretion of the justice before whom he is convicted, to imprisonment for a period not exceeding seven days (*s.* 29).

(*o*) See Public Health Act, *ante*, p. 207.

(*p*) See LICENSING, and title DRUNKENNESS (General Subjects), *ante*.

Fires.—Every person who wilfully sets or causes to be set on fire any chimney within the limits of the special Act shall be liable to a penalty not exceeding 5*l.*: Provided always, that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be indicted for felony (s. 30).

If any chimney accidentally catch or be on fire within the said limits, the person occupying or using the premises in which such chimney is situated shall be liable to a penalty not exceeding 10*s.*: Provided always, that such forfeiture shall not be incurred if such person prove to the satisfaction of the justice before whom the case is heard that such fire was in no wise owing to omission, neglect, or carelessness of himself or servant (s. 31).

Harbouring constable.—Every victualler or keeper of any public-house, or person licensed to sell wine, spirits, beer, cider, or other fermented or distilled liquors by retail, to be drunk or consumed on the premises within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public-house or place wherein he carries on his business, any constable during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance or restoring order, shall for every such offence be liable to a penalty not exceeding 20*s.* (s. 34).

Harbouring thieves, etc.—Every person keeping any house, shop, room, or other place of public resort (*q*) (within the limits of the special Act) for the sale or consumption of refreshments of any kind, who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises, shall for every such offence be liable to a penalty not exceeding 5*l.* (s. 35).

Baiting animals.—Every person who within the limits of the special Act keeps or uses or acts in the management of any house, room, pit, or other place for the purpose of fighting, baiting, or worrying any animals, shall be liable to a penalty of not more than 5*l.*, or, in the discretion of the justices before whom he is convicted, to imprisonment with or without hard labour for a term not exceeding one month; and the commissioners may by order in writing authorize the superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons found therein without lawful excuse, and every person so found shall be liable to a penalty not exceeding 5*s.*; and a conviction for this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penal consequences to which he is liable for the nuisance thereby occasioned (s. 36).

Hackney Carriages.

Proprietors and drivers of hackney carriages (*r*) are liable to penalties for certain offences:—

Plying for hire (*s*) without a licence; proprietors neglecting to retain

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(*q*) A public-house is a place of public resort. *Cole* v. *Coulton*, 29 L. J. 125.

(*r*) A hackney carriage must be deemed to mean a carriage offered for hire to the public, whether standing in a public street or in a private railway yard. *Bateson* v. *Oddy*, 43 L. J. 131.

(*s*) As to what is plying for hire and carriages standing at railway stations, see *Case* v. *Storey*, 38 L. J. 115; and for concise collection of

licence of drivers when in their employ, or failing to produce the same when summoned before justices; neglecting or refusing to carry the prescribed number of passengers as indicated on carriage; refusing to drive without reasonable excuse (*t*); demanding more than the sum agreed for, though less than the legal fare; drivers exacting more than the proper fare (s. 55): leaving carriages unattended at places of public resort (*u*); improperly standing with carriage, obstructing any other driver, or depriving him of his fare (ss. 45—64).

Offences by hirer.—Refusing to pay proper fare (*x*) (s. 66); injuring carriage, etc.

BATHING.

Public bathing.—The local authority can make bye-laws for regulating the manner in which bathing-machines may be used for preventing indecent exposure, the distances at which boat shall be kept from bathers, and the charges to be made for use of machines (s. 69).

Procedure (*Jurisdiction*). — The proceedings for the recovery of penalties will be the same as under the Towns Improvement Clauses Act, p. 280, *ante*. Under some of the sections one justice may commit, but where the procedure is under the Public Health Act, 1875, the hearing and conviction must be before two justices, and the authority to prosecute can only be delegated under s. 259 of that Act to an officer of the sanitary authority, and not to a constable when he is not such an officer. See *Kyle* v. *Barber*, *ante*, p. 281. When the conviction is by one justice, the sum adjudged to be paid must not exceed 20*s*., and the imprisonment must not exceed fourteen days.

The Home Secretary has advised (see subjoined Circular Letter, May 19th, 1893) that in view of s. 253 of the Public Health Act, 1875, only an officer of the urban sanitary authority can prosecute for offences *other than those in s.* 25 of this statute, but *the case is different as regards s.* 28, as the power to any constable to apprehend implies a general

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cases, see *Treat*, 48 J. P. 451. A *station yard* is a *private place*, and persons not authorized to ply for hire there may be convicted of trespassing under Railway Regulations Act, 1840. See *Treat*, 60 J. P. 643.

(*t*) It was held that a cabman could not refuse to take a passenger to his own house or to any place he was ordered to go. See *Clark* v. *Stanford* (1871), 40 L. J. 151.

(*u*) A constable may drive the carriage and horse to a place of safety. Cabmen's shelters may be provided (s. 40) if Amendment Act, 1890, be adopted.

(*x*) The fare, though recoverable as a *penalty*, is really only a *debt*.

authority to inform, and the decision in the case of *Kyle* v. *Barber* (which was a decision under a local Act where there was no such provision) is not applicable (58 J. P. 483), p. 254.

[Copy of Circular Letter referred to.]

Home Office, Whitehall,
May 19*th*, 1893.

Sir,

I have laid before the Secretary of State your letter of the 4th inst. asking that the standing joint committee of the county of Chester may be furnished with his opinion upon the powers of the police to enforce in urban sanitary districts of the county the sections of the Towns Police Clauses Act, 1847, which are by section 171 of the Public Health Act, 1875, incorporated in that Act.

In reply, I am to say for the information of the committee that as regards the provisions of the Towns Police Clauses Act other than those in section 28, the Secretary of State is advised that in view of section 253 of the Public Health Act, 1875, only an officer of the urban sanitary authority can prosecute.

The case is different as regards section 28, where it is provided (including the amendment in section 171 of the Public Health Act) that any constable or officer of police acting in and for the district of any urban sanitary authority shall take into custody without warrant and forthwith convey before a justice any person who within his view commits any such offence. As the conveyance before a justice implies a general authority to inform, it appears to the Secretary of State that there must be an exception to section 253 of the Public Health Act so as to enable the police to prosecute for offences under section 28.

The decision in the case of *Kyle* v. *Barber*, to which you refer in your letter, was a decision under a local Act, where there was no such provision as that quoted above, and it is clear that that case does not decide that the police cannot prosecute for offences under section 28 of the Towns Police Clauses Act, 1847.

I am Sir, your obedient servant,
(Signed) E. Leigh Pemberton.

The Clerk to the Standing Joint
Committee for the County of Chester.

Bye-laws.—The Towns Improvement Clauses Act, 1847, with respect to bye-laws is incorporated; as to the publication of such bye-laws, see s. 205 of that statute.

Trades Unions.

The law as to trades unions was amended by 34 & 35 Vict. c. 31, and 39 & 40 Vict. c. 22.

Trades unions are not unlawful by reason merely that they are in restraint of trade.

An important alteration as to definition of "Trades Unions" is made by s. 16 of 39 & 40 Vict. c. 22. See also title Intimidation, *ante*.

Training and Drilling.

Meetings of persons for the purpose of training or drilling to use arms, or practising military exercises without lawful authority, are prohibited, and offenders are liable to fine and imprisonment.

Persons present at such meetings for the purpose of training others are liable to penal servitude for seven years (60 Geo. 3, c. 1).

Tramways.

33 & 34 Vict. c. 78, regulates the construction and working of tramways.

By s. 50, any person who wilfully places any stones, dirt, wood, or refuse, or other material, on any part of a tramway, or who does, or causes to be done, anything in such manner as to obstruct any carriage using a tramway, or knowingly aids or assists in the doing of any such thing, is liable to a penalty of 5*l.*, in addition to any other proceedings. The Act empowers local authorities to make bye-laws regarding rate of speed, distance to be observed between cars, stopping places, etc.

Treason.

High treason.—The 25 Edw. 3, c. 3, deals with the crime of treason. This Act has been extended by 35 Geo. 3, c. 7, and 11 Vict. c. 12 (Treason Felony Act, 1848). By 5 & 6 Vict. c. 51, s. 2, it is a high misdemeanor to discharge any gun, etc., or to throw at or near the person of the Queen any substance, etc.

By 11 & 12 Vict. c. 12, s. 3, it is treason felony to compass, or intend to depose, etc., the Sovereign, or to levy war, etc., against the Sovereign.

Misprision of treason.—Every one who knows that any other person has committed high treason, and does not within a reasonable time give information thereof, is guilty of misprision of treason, and is liable to imprisonment for life. See also titles Sedition, Training and Drilling, *ante*.

Treasure Trove.

Treasure trove, or treasure found, is where any money or coin, gold, silver, plate, or bullion is found hidden in the

earth or other private place, the owner thereof being unknown, in which case the treasure belongs to the Queen, the finder receiving the full bullion value from the Lords Commissioners of the Treasury.

Trespass.

A mere entry on the land of another, provided it be not a forcible entry (see p. 3), is not a criminal offence, but one for which an action will lie and damages may be claimed; but refusal to leave on request may constitute conduct which may tend to provoke a breach of the peace.

Where an occupier finds a person in his house who though he has perhaps entered peaceably, refuses to leave, there is nothing to prevent the police aiding such occupier in the assertion of his civil rights by assisting the occupier in turning out the person improperly there, although such person is only a trespasser. But the constable should only act in the presence and at the express request of the lawful occupier, and he must satisfy himself that he can place reliance on the statement of the occupier as to the real facts of the case, otherwise he may find he is engaged in an unlawful transaction, and become liable to civil proceedings. The constable should himself use persuasion before laying hands on the person, and he should on no account arrest or detain him unless he has some other charge against him.

In cases such as the above the character of the intervention is not so much that of a police constable acting as a peace officer, but rather as a private person aiding the occupier, acting as his servant for the special purpose.

The greatest care is necessary in discriminating between cases such as above referred to and cases of real dispute as to right of possession, in which the police should not interfere.

As to trespassing in pursuit of game, see title Game, *ante*.

As to trespassing on railway lines, stations, etc., see title Railways, *ante*.

As to malicious injury to property, real or personal, by trespass, etc., see 24 & 25 Vict. c. 97, ss. 51—53, Appendix, *post*.

Regarding wilful and malicious trespass, s. 52 of 24 & 25 Vict. c. 97, above referred to, contains the following proviso:—

"Provided that nothing herein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass not being wilful and

malicious committed in hunting, fishing, or in the pursuit of game, but that every such trespass shall be punishable in the same manner as if this Act had not passed." See also s. 53.

Claim of title or right.—The jurisdiction of the magistrates is not to be ousted by a mere fictitious pretence of title. Even where the defendant produces no evidence it is still for the justices to determine, from all the circumstances of the case, whether the party really acted under a fair claim of right. If he did, the complainant must resort to his civil remedy. *R.* v. *Edwards*, 20 J. P. 68; and *R.* v. *Cheshire JJ.*, 23 J. P. 724.

The question was further considered in a case where the Court of Queen's Bench held that the special words of s. 52 qualify the ordinary restriction as to the jurisdiction of justices, and that jurisdiction is not ousted in cases of injury to property if they are satisfied that the defendant had unreasonably believed he was justified in doing the acts which caused the injury. *White* v. *Feast*, L. R. 7 Q. B. 353; 36 J. P. 436; 26 L. T. 611.

Truck Act.

The Truck Act, 1831 (1 & 2 Will. 4, c. 37), is referred to under heading EMPLOYERS AND WORKMEN, see p. 134, *ante*. The Truck Act, 1831, is largely extended by the Truck Acts, 1887 and 1896.

The Act of 1896 permits no fine or deduction which is not either under written or specific contract with the workmen or under implied contract by keeping notices constantly affixed in places easily seen and read by workmen, detailing the maximum amount of the fine or deduction, the act or omission for which it may be imposed, and other particulars.

A Workman's Compensation Act was passed August, 1897.

Uniforms Act.

By the Uniforms Act, 1894, any person wearing a *military* uniform without authority is liable to fine, with exception of (a) members of a band in recognized uniform at passing of Act (August 25th, 1894), unless such uniform exactly imitates a military uniform; (b) persons wearing uniform in course of stage plays, music-hall or circus performances, or in any *bonâ fide* military representation.

A person not serving in Her Majesty's naval or military forces wearing any such uniform or employing others to do so in a manner likely to bring contempt on the uniform, is liable to fine or imprisonment.

Vaccination.

The parent, or other person having the charge of any child, must have it vaccinated within three months of its birth; penalty for neglect, 20*s.* (s. 29).

Where neglect is shown a justice may make an order directing vaccination; penalty for disobedience of orders, 20*s.* (s. 31).

There may be a series of orders so long as the child is unvaccinated, and a series of convictions for disobedience.

Any person who shall attempt, etc., to produce by inoculation with variolous matter the disease of small-pox in any person shall be liable to imprisonment for one month (30 & 31 Vict. c. 84, s. 32).

Vagrants.

The Vagrancy Act, 1824 (5 Geo. 4, c. 83) divides vagrants into three classes:

(1.) Idle and disorderly persons;

(2.) Rogues and vagabonds;

(3.) Incorrigible rogues;

but such distinction need not necessarily be observed when proceeding against persons for offences against the vagrancy laws.

(1.) "Idle and disorderly persons" include (1) persons leaving families chargeable; (2) persons fraudulently applying for relief; (3) persons being chargeable to parish from which they have legally been removed; (4) unlicensed pedlars; (5) prostitutes behaving riotously; (6) persons begging alms, see *post*, pp. 294—296.

Punishment.—Such persons are punishable by commitment by one justice for fourteen days, or by two justices (in petty sessions) for one month (s. 3); a fine may be imposed in lieu of imprisonment.

(2.) "Rogues and vagabonds." Under this head are included: (1) persons pretending to tell fortunes; (2) lodging in outhouses, etc.; (3) exhibiting obscene pictures, etc.; (4) indecently exposing person; (5) exposing wounds, etc.; (6) fraudulently collecting alms; (7) any person running away and leaving family chargeable; (8) persons gaming in

public places; (9) persons found in possession of housebreaking implements, or (10) armed with offensive weapon, etc., or (11) found on premises for unlawful purposes; (12) reputed thieves; (13) persons resisting police; (14) persons convicted a second time as "idle and disorderly," p. 296.

Punishment. Commitment by one justice for not exceeding fourteen days, or by two justices (in petty sessions) for three months (s. 4).

(3.) "Incorrigible rogues." Every person convicted for the second time as a rogue and vagabond, or person violently resisting police so apprehending him. Vagrants breaking out of confinement, *re* punishment, see p. 298.

Persons resisting apprehension may be committed to prison with hard labour, there to remain until the next general or quarter sessions of the peace.

Further punishment of incorrigible rogues.—When any incorrigible rogue shall have been so committed, it shall be lawful for the justices at quarter sessions to order that such offender shall be further imprisoned with hard labour for not exceeding one year, with liability (if a male) to be whipped (s. 10 of Act).

1. Idle and Disorderly Persons.

Persons committing the following offences can be punished as idle and disorderly persons. See p. 293.

Neglecting to maintain family.—All persons able wholly or in part to maintain themselves or their families, either by work or other means, and wilfully refusing or neglecting so to do (*y*), by which refusal they or their families shall become chargeable to any parish, township, or place.

Neglecting child.—Any woman who neglects to maintain her bastard child may be punished as an *idle and disorderly*

(*y*) Any man capable of maintaining his family by work, and who neglects or refuses so to do, is an idle and disorderly person, and it is not necessary to show that he was an idle person who refused work. See "Justice of the Peace," vol. 33, p. 37, *Carpenter* v. *Stanley*. By 13 & 14 Vict. c. 101, s. 5, an order for maintenance of wife may be made upon the husband should she become chargeable on account of her lunacy. If a wife refuses to live with her husband, he cannot be punished for neglecting to maintain her, and no past cruelty on his part can be urged in justification for her refusing to live with him. The evidence of the wife on a charge of neglecting to maintain her cannot be received against the husband. A constable is not justified in apprehending without a warrant a man whose wife is chargeable to the parish.

person (*z*); and if she neglects it a second time, or so deserts her child that it becomes chargeable, she may be punished as a *rogue and vagabond* (*a*) (7 & 8 Vict. c. 101, s. 6).

Fraudulently applying for relief.—Persons applying for relief at any workhouse, or to any relieving officer or overseer, having at the time in their possession or under their control any property of which, on inquiry, they shall not make a full and complete disclosure (11 & 12 Vict. c. 110, s. 10). Paupers who wilfully give false name or make false statement for the purpose of obtaining relief (34 & 35 Vict. c. 108, s. 7). Extended by 39 & 40 Vict. c. 61, s. 44, to any person who shall obtain relief by giving a false answer or making a false statement, and further extended by 45 & 46 Vict. c. 36, s. 5, to any person who, for the purpose of obtaining relief from the rates raised for the relief of the poor, by himself or any other person wilfully gives a false answer or makes or uses a false statement to the guardians of any union or any of their officers. See also p. 299.

Persons becoming chargeable.—Under s. 3 of the Vagrant Act (5 Geo. 4, c. 83), all persons who return to or become chargeable to any parish, township, or place from which they have been legally removed by order of two justices, unless they produce a certificate of the churchwardens and overseers of some other parish, township, or place acknowledging them to be settled there.

Pedlars.—All petty chapmen or pedlars, who wander abroad and trade, not being licensed or otherwise authorized by law.

Prostitutes.—Also common prostitutes wandering in the public streets, public highway, or in any place of public resort, and behaving in a riotous or indecent manner.

Beggars.—And any person (*b*) wandering abroad, or

(*z*) See also 31 & 32 Vict. c. 122, s. 37.

(*a*) If the woman has married, she cannot, it is conceived, be punished while the husband is alive, he being liable for support of child (4 & 5 Will. 4, c. 76, s. 57).

(*b*) Persons seeking assistance under exceptional circumstances, provided that it is not their habit or mode of life and that the begging is not for an unlawful object or done disorderly, are not vagrants within this section. *Pointon* v. *Hill*, 12 Q. B. D. 306; 53 L. J. 62; 48 J. P. 342. As to collecting boxes in streets for charitable purposes, see 60 J. P. 460.

placing himself or herself in any public place, highway, court or passage, to beg or gather alms, or causing or procuring any child or children so to do.

2. Rogues and Vagabonds.

The following are offences under s. 4 of Act. Offenders are deemed rogues and vagabonds for punishment. See p. 294.

Fortune-telling.—Any person who pretends or professes to tell fortunes or uses any subtle craft, means, or device, by palmistry or otherwise (*c*), to deceive or impose on any of Her Majesty's subjects.

Lodging out.—Every person wandering abroad and lodging in any barn or outhouse or unoccupied building, in the open air or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself.

Indecent exhibitions.—Persons who wilfully expose (*d*) to view in any street or public place (*e*), or in any building situate in any street or public place, any obscene print or other indecent exhibitions.

Exposing person.—Any person who wilfully, openly, and obscenely exposes his person in any street or public highway, or in view thereof, or in any place of public resort, with intent to insult any female (*f*).

Exposing wounds.—Also persons who wander abroad and endeavour to obtain alms by the exposing of wounds or deformities.

Collecting alms.—Every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind under any false or fradulent pretence.

Running away leaving family chargeable.—Every person running away and leaving wife or his or her children chargeable to any parish, or by 12 & 13 Vict. c. 103, s. 3, to the common fund of the union (*g*). See also p. 294, *ante*, as to woman deserting child.

(*c*) Regarding "Spiritualists," see *Monck* v. *Hilton*, 41 J. P. 214. In *Johnson* v. *Fenner*, 33 J. P. 740, it was held that the device must be *ejusdem generis* with palmistry, but in *Re Slade*, 36 L. T. 402, it was held that the words "or otherwise" are distinct from the previous general words. As to Astrologists, see *Penny* v. *Harrison*, 56 L. J. 41; 51 J. P. 167.

(*d*) The Carmarthenshire Quarter Sessions held that writing obscene words on a gate in a public highway was not within this section. *Thomas* v. *Bradbury*, 47 J. P. 505.

(*e*) Public urinal is a public place. *R.* v. *Harris*, 24 L. T. 74.

(*f*) See also "Towns Police Clauses Act," *ante*, p. 285.

(*g*) Proceedings may be taken any time within two years after offence *Rees* v. *Yates*, 31 L. J. 241. A warrant may be issued on information of relieving officer, stating that relief has been applied for and he believes parent has absconded (39 & 40 Vict. c. 61, s. 19).

Gaming in public place etc.—Every person playing or betting in any street, road, highway, or other open and public place (*h*) at or with any table or instrument of gaming at any game or pretended game of chance, is to be deemed a rogue and vagabond.

[*Amendment Act* (36 & 37 Vict. c. 38, s. 3). Every person playing, or betting by way of wagering, or gaming in any street, road, highway, or other open and public place (*i*), or in any open place to which the public have or are permitted to have access, at or with any table or instrument of gaming (*k*), or any coin, card, token, or other article used as an instrument of such wagering, or gaming at any game or pretended game of chance, is to be deemed a rogue and vagabond, and may be punished under 5 Geo. 4, c. 83, or if the justices think fit, in lieu of such punishment, by a penalty for the first offence not exceeding 40*s.*, and for any subsequent offence not exceeding 5*l.*]

[*For recovery of penalty, see* 11 *&* 12 *Vict. c.* 43, *s.* 22, *and* 42 *&* 43 *Vict. c.* 49 (*Summary Jurisdiction Acts*), post, pp. 383, 384.]

Note.—This statute in effect repeals the enactment contained in 5 Geo. 4, c. 83, and substitutes the above clause for it. The offence can only be committed in such places as the public have or are permitted to have access to.

Possession of picklocks, keys, etc.—All persons who have in their custody or possession any picklock, key, crow, jack, bit, or other implement with intent feloniously to break into any dwelling-house, warehouse, stable, or outbuilding.

Armed with offensive weapon.—Every person being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument with intent to commit any felonious act.

See also Larceny Act, s. 58, Appendix, *post.*

Found on premises.—Every person found in or upon any dwelling-house, warehouse, stable, or outhouse, or in any inclosed yard, garden, or area for any unlawful purposese.

The "unlawful purpose" must be the intention to commit some offence which if committed would render the person liable to a criminal prosecution. If the crime has been committed a summary conviction will be irregular, as the misdemeanor merges in the felony. It is not necessary that the "unlawful purpose" should mean the intention to commit crime at the time or place where the person is found; but if the information states

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(*h*) A railway carriage in transit is a public place. *Langrish* v. *Archer* 52 L. J. 47; 47 J. P. 295.

(*i*) The question arose in *Ex parte Freestone* whether a railway is a public place or not. POLLOCK, C.B., intimated his opinion that a railway was a public place. *Ex parte Freestone*, 25 L. J. 121. See also *Ex parte Davis*, 21 J. P. 280.

(*k*) See *Dyson* v. *Mason*, 53 J. P. 262.

The Home Secretary, September, 1895, refused to interfere with a conviction for playing the "stick and button" trick (59 J. P. 668).

The recorder of Scarborough held on appeal that a betting book is not "an instrument of gaming" (48 J. P. 457).

that the unlawful purpose was to commit a felony, the justices must find that such was the purpose.

Suspected persons.—Every suspected person or reputed thief frequenting any river, canal, or navigable stream, dock, quay, warehouse, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, or any highway, or any place adjacent thereto, with intent to commit a felony. See also 34 & 35 Vict. c. 112, s. 15.

Second conviction, resisting apprehension, etc.—Every person committing any of the offences for which the offender is to be deemed an idle and disorderly person, and who has been previously convicted of such offence; also every person apprehended as an idle and disorderly person, and violently resisting any constable or other police officer so apprehending him or her, and being subsequently convicted of the offence, is to be deemed a rogue and vagabond.

3. Incorrigible Rogues.

An incorrigible rogue (s. 5) is a person who has been previously convicted as a rogue and a vagabond. See p. 294.

Or who violently resists any constable apprehending him for being a rogue and vagabond, and convicted as such.

Or who breaks or escapes out of any place of legal confinement before the expiration of the sentence passed on him for being a rogue and vagabond.

Punishment.—Any person convicted of any such offence may be committed with hard labour until the next quarter sessions. As to further punishment, see p. 294, *ante*.

Procedure.

The parish officers or assistant overseer may make the complaint, and a justice may grant a warrant against any offender. Any person may apprehend without a warrant any one found offending against this Act; but the person must be "found offending" or doing some specific act. Hence, it has been held that a constable is not justified in arresting without a warrant a man charged with neglecting to maintain his family. *Horley* v. *Rogers*, 29 L. J. 140. In such a case the constable should have the warrant in his possession at the time of the arrest. See *Codd* v. *Cabe*, 45 L. J. 101; 40 J. P. 506; *Galliard* v. *Laxton*, 31 L. J. 123.

Expenses.—Any money found upon or in the possession of any offender may be applied towards the expense of arrest, conveyance to gaol, and maintenance therein, or the justices may order the effects of the offender to be sold and the proceeds so applied (s. 8).

Warrant.—Upon information on oath that any person described in the Act either as an idle and disorderly person, a rogue and vagabond, or an incorrigible rogue, is, or is suspected to be, concealed in any house kept for the lodging of travellers, a justice may by warrant authorize any person to enter such house at any time and arrest such person, to be dealt with according to law (s. 13).

Appeal.—Appeal lies to the quarter sessions.

NOTE.—*Liability of constable.*—A constable neglecting his duty under the Vagrant Act is liable to a penalty of 5*l.* and any one who shall disturb or hinder a constable in execution of his duty can be prosecuted.

RELIEF OF VAGRANTS.

Members of the constabulary are frequently appointed assistant relieving officers of vagrants.

The Act 11 & 12 Vict. c. 110, enacts that any person applying for relief who does not, when required by the guardians, their officers, or the overseers, make complete and correct disclosure of the money or other property in his possession and under his immediate control, is declared to be "idle and disorderly" within the meaning of the Vagrancy Act, and is liable to be dealt with as such, p. 295.

The following is a copy of a Minute of the Poor Law Board:

"With respect to the applicants that will come before him, the relieving officer will have to exercise his judgment as to the truth of their assertions of destitution, and to ascertain by searching them whether they possess any means of supplying their own necessities. He will not be likely to err in judging from their appearance whether they are suffering from want of food. He will take care that women and children, the old and infirm, and those who, without absolute serious disease, present an enfeebled or sickly appearance, are supplied with necessary food and shelter. As a general rule, he would be right in refusing relief to able-bodied and healthy men, though in inclement weather he might afford them shelter, if really destitute of the means of procuring it for themselves. His duties would

necessarily make him acquainted with the persons of the habitual vagrants, and to these it would be his duty to refuse relief, except in case of evident and urgent necessity."

Verminous Persons.

The Cleansing of Persons Act, 1897, permits local authorities to provide cleansing and disinfection for persons infested with vermin.

Vexatious Indictments.

(22 & 23 Vict. c. 17.)

The Act requires that no indictment be preferred for perjury, subornation of perjury, conspiracy, obtaining money or goods by false pretences (*l*), keeping a gambling or disorderly house, and indecent assault, or for offences under the Criminal Law Amendment Act, 1885, unless the prosecution has been bound over to prosecute or give evidence, or unless the accused shall have been committed to or detained in custody or has been bound over to answer an indictment for such offence, or unless the consent of a judge or the Attorney-General be obtained.

Warrants.

Regarding arrest without warrant, see p. 7, *ante*; see also titles ARREST, CHILDREN, GAME, HIGHWAYS, LARCENY, VAGRANTS, etc.

Justices are empowered under provisions of Indictable Offences Act (1848) and Summary Jurisdiction Acts to issue warrant or summons, and where a summons is issued if the party so summoned do not appear a warrant may issue to apprehend him. Indictable Offences Act, 1848, s. 9, and Summary Jurisdiction Act, 1848, s. 2. See p. 380.

As a constable acting under the authority of a warrant is in a better position to follow and arrest an offender than a constable acting without warrant—by virtue of his office only—it is always advisable, where time admits, to procure a warrant for the arrest of offenders. In arresting with a warrant the party arrested may be shown the warrant if he desires it, for by so doing any question as the legality of the arrest will be prevented and much trouble may be saved.

(*l*) Attempting to obtain property by false pretences in not included in the Act. *R.* v. *Burton*, 39 J. P. 532.

If the warrant is directed to the constable he cannot authorize others to execute it, but others may lawfully assist him to do so, and in that case he should be near at hand and acting in the arrest in order to render it legal.

The constable should not part with the warrant under any circumstances prior to its execution, but after execution he should hand it to his superior officer that it may be carefully filed at the station and preserved for the constable's future protection. A warrant continues in force until it is fully executed and obeyed.

The dates of receipt and execution of all warrants and by whom executed must be punctually endorsed thereon.

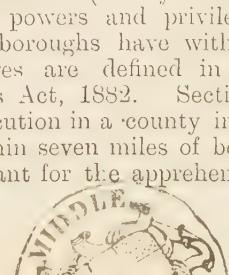
In proceeding to execute warrants and other police duty constables should act with the utmost discretion and silence, communicating with no one, except members of the force, concerning their movements or the nature of the service on which they are engaged.

Retaking.—It has been held that if a constable after he has arrested the party lets him go at large on his promise to come again and find sureties, he cannot afterwards arrest him by force of the same warrant, but if a party arrested do escape, the constable on fresh pursuit may take him again and again so often as he escapes.

Fresh pursuit.—In cases of fresh pursuit when the offender escapes out of the jurisdiction of the justice into an adjoining county or place, the constable or person having the warrant, if in actual pursuit, may follow the offender to the distance of seven miles from the border or confines of the jurisdiction.

"Backing" warrants.—Except in cases of fresh pursuit, a warrant cannot be executed beyond the jurisdiction of the justices issuing it, unless it be "backed," viz., endorsed by a justice of the county in which it is to be carried into execution. The justice backing the warrant must be satisfied that it is a lawful warrant. A "declaration" made by the constable holding the warrant that the signature of the warrant is in the handwriting of the magistrate by whom it purports to be signed is sufficient proof that it is a lawful warrant. See Indictable Offences Act and Summary Jurisdiction Act, 1879, s. 41, Appendix, *post*.

Note.—By 19 & 20 Vict. c. 69, s. 6, constables of every county have in all boroughs situated (wholly or in part) within such county the same powers and privileges as constables appointed for such boroughs have within any such county. These privileges are defined in s. 191 of the Municipal Corporations Act, 1882. Section 223 of that Act provides for the execution in a county in which any borough is situated (or within seven miles of borough) of a search warrant, or a warrant for the apprehension of



any person charged with an offence, issued by a justice of the peace for such borough without the same being backed by a justice of the county. Similar warrants, therefore, issued by a justice of any county within which a borough is situated (wholly or in part) do not necessarily require "backing" for execution within such borough. Warrants of commitment and other warrants issued by a county justice should be "backed" before being executed in such boroughs where such boroughs have a separate police jurisdiction. See *R.* v. *Cumpton*, 44 J. P. 489.

Search Warrant.

By the Larceny Act, 1861, s. 103, it is enacted that if any credible witness shall prove upon oath before a justice that he has *reasonable cause* (see *Wyatt and White*, 24 J. P. 197 and 242) to suspect that any person has in his possession or on his premises any property whatever on or with respect to which any offence punishable either upon indictment or upon summary conviction by virtue of that Act (Larceny Act) shall have been committed, the justice *may grant a warrant* to search for such property as in the case of stolen goods.

The search should be made in the daytime if there be probable suspicion only, but where there is positive proof the warrant may be executed in the night time. A search warrant may be granted on *Sunday* (Indictable Offences Act, 1848, s. 4), *and may, it is conceived, be executed Sunday*, p. 8.

When a search warrant is given to a constable to carry into execution he should demand admittance to the premises, and if refused he may break open the doors. After having obtained entrance by force or otherwise a constable may without any further request break open any inner doors which obstruct his search (Chitty's Constables, 2nd ed., p. 17).

A warrant directing a search in a particular house only will not justify a search in another. In case a further search is necessary another search warrant should be obtained, a watch being meantime kept upon the suspected house and inmates. It is doubtful whether a constable will be justified in searching for stolen goods in a house without a warrant, *even with the consent of the occupier*. See 23 J. P. 94.

A search warrant is required for the constable's protection in case nothing is found, but in the event of a serious

felony having been committed and the stolen property traced into a house and its being there as certain as if it were seen, a constable would run no risk of an action for damages if he entered and seized both the property and the suspected thief. But the greatest caution is necessary in such a case.

The constable must strictly observe the directions of the warrant, and if he be directed to seize only stolen sugar and seize tea, he will be a trespasser. *Price* v. *Messenger*, 2 B. & P. 158, and *Bell* v. *Oakley*, M. & S. 261. But it has been held in a later case (*m*) that the particular goods to be searched for *need not be specified in the warrant*, and nothing is more common than on searching the house of some notorious thief to find other stolen articles than those searched for, and it is an every-day practice for constables to secure such as well as the party suspected, and thereby bring him to justice. But as the constable has no warrant to fall back upon in such a case, he should be *most certain* that the article so found has really been stolen, and that the proof of such felony is at hand before he takes either the goods or the party into custody. In *Crozier* v. *Cundy*, 6 B. & C. 232, a constable was held to be a trespasser for having seized articles not mentioned in the warrant, and which were not likely to be of use in substantiating the charge of stealing the goods that were so specified.

The constable must have the warrant in his personal possession at the time of the search, and produce it if required. See *Codd* v. *Cabe*, 45 L. J. 101 ; 40 J. P. 506. The only persons legally authorized to execute a warrant are the persons to whom it is directed ; the authority cannot be delegated. *Symonds* v. *Kurtz*, 33 Sol. J. 491, 53 J. P. 727.

Distress Warrant.

The regulations regarding issue, execution, etc., of warrants of distress are given in the Summary Jurisdiction Acts. See p. 382.

An officer or constable legally authorized to distrain can enter on the premises for the purpose of making a seizure of the distress. In executing these warrants there is *no power to break open doors* or gates in case they are locked up or shut, and the constable is to show his warrant on request to the person whose goods are distrained, and suffer a copy of it to be taken, but in no case to part with his warrant.

When the distress is levied on household goods the goods shall not be removed from the house until the day of sale, except with the consent in

(*m*) *Jones* v. *German*, 45 W. R. 112 ; 60 J. P. 786, to effect that it is not necessary to state in the warrant that a felony has been committed nor to specify the goods to be searched for. An action will not lie against a person for inducing a magistrate to issue a search warrant if the applicant is acting *bonâ fide*, and therefore without malice, and fairly and fully states his grounds of suspicion to the magistrate, and the magistrate comes to the conclusion that there are reasonable grounds for issuing the warrant. *Hope* v. *Evered*, 17 Q. B. D. 338 ; 55 L. J. 146

writing of the person against whom the distress is levied, out so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark. Any person removing the goods so marked, or removing the mark therefrom, is liable to a penalty (*n*). The wearing apparel and bedding of a person and his family, and the tools and implements of his trade to the value of 5*l*., shall not be taken under a distress issued by a court of summary jurisdiction.

If no sufficient distress is found the constable is not to seize or impound *less*, but report to the magistrate that there is no sufficient distress, and he will then commit the defaulter to prison.

Care must be taken not to make an *excessive* distress, that is, not to seize several articles which altogether amount to far more in value than is wanted.

Goods distrained are to be sold by public auction, and for this purpose the constable distraining will secure the services of an auctioneer.

The constable is to certify to the magistrate who grants the warrant what has been done under it. A form of return is printed on back of warrant. See Summary Jurisdiction Act, 1879, Appendix, *post*.

Note—Police assistance.—The police when called on are bound to assist sheriffs' officers and county court bailiffs in the performance of their duties, and may receive into their custody persons charged with committing assaults upon them. The police should in all cases require the sheriff's officer or county court bailiff to produce the writ or other authority under which he is acting.

Weights and Measures.

The Weights and Measures Acts, 1878 and 1889 (41 & 42 Vict. c. 49, and 52 & 53 Vict. c. 21), repeal all previous Acts relating to weights and measures. The object of the Act is to enforce *uniformity* of weights and measures; it does not prevent sales otherwise than by weight and measure (48 J. P. 115). The use of weights and measures of the metric system is legalized by 60 & 61 Vict. c, 46 (1897).

All weights and measures used for trading purposes must be stamped with stamp of verification by an inspector appointed under the Act, and if not so stamped the person using same shall be guilty of an offence (*o*).

The local authority (see p. 309, *post*) shall, from time to time, fix the times and places within their jurisdiction at which each inspector appointed by them is to attend for the purpose of the verification of weights and measures, and the inspector shall attend with the local standards in

(*n*) See Summary Jurisdiction Act, 1879, s. 43, Appendix, *post*.

(*o*) The vexed question of the lawfulness of selling beer by an undefined measure described as a "glass" appears to have been authoritatively settled in Scotland in favour of the sellers. *Craig* v. *McPhee*, 51 J. P. 323.

his custody, at each time and place fixed, and shall examine every measure or weight which is of the same denomination as one of such standards (*p*) and is brought to him for the purpose of verification, and compare the same with that standard, and if he finds the same correct, shall stamp it with a stamp of verification (*q*) in such manner as best to prevent fraud (41 & 42 Vict. c. 49, s. 44).

The inspector should subsequently during the year visit at uncertain periods the towns and villages in his district as he considers occasion requires, and under the authority of his warrant enter shops, warehouses, etc., and *inspect* all scales, weights and measures, etc., kept there for trading purposes, noticing whether they are correct, and bear stamp of verification (*r*).

The inspector is usually responsible for the safe custody of the local standards of weights and measures, which should be carefully conveyed on all occasions when taken through district. As to powers and qualifications of officer, see p. 308, note (*t*).

Denomination and Verification (s. 28).—Weights should have the denomination marked thereon in legible figures and letters. These should be cast, or engraved on the weight (see definition "Stamping," s. 70 of Act), and not inserted on plugs or plates. The denomination should also be legibly marked on all measures of capacity. See also p. 307.

All vessels which are represented to contain any quantity of imperial measure, and which are used as measures, must be stamped both with the stamp of denomination and that of verification (*s*).

Disposal of forfeited weights.—By s. 57 of Act of 1878 all weights, measures, scales, balances, and steel-yards forfeited under this Act shall be broken up, and the

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(*p*) New standard—"a multiple of a bushel"—viz., a four bushel measure has been legalised since the passing of the Act in 1878, and a three gallon measure has been introduced since 1889. Order in Council, 22nd November, 1890.

(*q*) A weight (provided it is a copy of a Board of Trade standard) can only be considered an illegal weight when it is found to be *false or unjust*, or when *not stamped* with the inspector's stamp of verification; and it is to be noticed that an old stamp of verification must be recognised, although the mark may have become almost obliterated by use. *Starr* v. *Stringer*, 7 L. R. C. P. 383; 26 L. T. 735.

(*r*) An inspector stamping weights and measures of a person residing out of his district is liable to a fine of 20*l.* for every weight, etc. (s. 23 of Act).

(*s*) A churn fitted with a gauge to indicate number of gallons was found to be a measure for use for trade. *Harris* v. *London County Council*, [1895] 1 Q. B. 240.

materials thereof may be sold or otherwise disposed of as a court of summary jurisdiction direct.

Possession, etc.—Weights and measures and weighing instruments found on premises are held to be there for the purposes of trade till the contrary is proved and in the possession of the owner of such premises. See p. 309, *post*.

As to re-verification of local standards, see s. 41.

Analysis of Act of 1878.

(41 & 42 Vict. c. 49.)

An analysis of the principal sections of the Act of 1878 is appended. The Act of 1889 deals with weighing machines and instruments, and also with *sale of coal* by weight, see p. 310.

Uniformity.—The same weights and measures shall be used throughout the United Kingdom (s. 3).

Standards.—Sections 4 to 7 describe the imperial standards, also the "Parliamentary copies" of same, and the powers of the Board of Trade to restore the standards if lost or defaced.

Measure of length.—For definition of measures of length, *e.g.*, inch, foot, yard, fathom, pole, chain, furlong, mile, see ss. 10, 11, and 12.

Measures of weight and capacity.—Sections 13, 14, and 15 define the imperial pound, ounce, dram, 14 pounds, 28 pounds, and 56 pounds, hundredweight, ton, also the gallon, quart, pint, peck, bushel.

Trade.—All sales by weight or measure must be made according to one of the imperial weights or measures ascertained by this Act, or to some multiple or part thereof.

No local or customary measure nor use of heaped measure shall be lawful. Any person who sells by any other than one of the imperial measures shall be liable to a fine of 40*s.* for any such sale.

Avoirdupois weight.—All articles sold by weight shall be sold by avoirdupois weight. Penalty, 5*l.* Except that—

(1.) Gold and silver and articles made thereof, gold and silver thread, lace, or fringe, platinum and other precious metals, diamonds, and precious stones may be sold by the ounce troy, or by decimal parts of it.

(2.) Drugs, when sold by retail, may be sold by apothecaries' weight.

"Ounce troy" is defined in s. 14 to consist of 480 grains, and the Board of Trade standards of apothecaries' weights and measures are set forth in an annexed schedule which appeared in the *London Gazette* of August 15th, 1879.

Sale of article in vessel not represented as being an imperial or local measure.—Nothing in this Act shall prevent the sale, or subject a person to a fine for the sale of an article in any vessel which is not represented as containing any amount of imperial measure, nor subject a person to a fine under this Act for the possession of a vessel where it is shown that such vessel is not used nor intended for use as a measure (s. 22).

Printing returns, price lists, price current, etc.—Any person who prints or makes any return, price list, price current, or any journal in which the denomination of weights and measures quoted denotes a greater or less weight or measure than is denoted by the same denomination of the imperial weights and measures, shall be liable to a fine not exceeding 10*s.* for every copy of such.

Possession of unauthorized weights or measures.—Any person using, or having in his possession for use for trade, any weight or measure not being of the same denomination as some Board of Trade standard. Penalty, fine not exceeding 5*l.*, or for a second offence 10*l.*, and the weight or measure will be liable to be forfeited.

Unjust weights and measures.—Every person using, or having in his possession for trade purposes, any weight, measure, or weighing instrument which is false or unjust, is liable to a fine not exceeding 5*l.*, and on a second offence 10*l.*, and any contract, bargain, sale, or dealing made by the same will be void, and the weight, measure, or weighing instrument will be liable to be forfeited. As to disposal of same, see p. 305.

The fine for a second or a subsequent offence under s. 25 or s. 26 of the principal Act shall be a sum not exceeding 20*l.*, and the provisions of the said s. 26 with respect to forfeiture shall apply to weighing instruments as they apply to weights and measures. A person in addition to or in lieu of any fine to be imprisoned with or without hard labour for a term not exceeding two months.

Fraudulent use of weights, measures, etc.—Where any fraud is wilfully committed in the using of any weight, measure, or weighing instrument, the person committing such fraud, and every person party to the fraud, is liable to a fine not exceeding 5*l.*, and for a second offence 10*l.*, and the weight, etc., to be forfeited (s. 26).

Sale of false weights, etc.—Any person wilfully making or selling a false weight, measure, scale, balance, steel-yard, or weighing machine—penalty not exceeding 10*l.*, and for a second offence 50*l.* (s. 27).

Stamping and Verification.

Denomination.—Every weight, except where the small size of the weights renders it impracticable, shall have the denomination stamped on the top or side in legible figures and letters, and every measure of capacity on the outside. A weight or measure not in conformity with this section, *i.e.*, which is not so stamped with its denomination, shall not be stamped with the stamp of verification defined in s. 29 (s. 28).

Verification.—All weights and measures used for trade must be verified and stamped by an inspector with a stamp of verification under this Act. Every person who uses, or has in his possession for use for trade, any measure or weight not stamped as required by this section, shall be liable to a fine not exceeding 5*l.*, or for a second offence 10*l.*, and the weight or measure shall be liable to be forfeited, and the bargain, sale, etc., shall be void (s. 29).

Every weighing instrument used for trade shall be verified and stamped by an inspector of weights and measures, with a stamp of verification under this Act.

Every person who uses, or has in his possession for use for trade, any weighing instrument not stamped as required by this Act, shall be liable to

a fine not exceeding 2*l*., or in the case of a second offence 5*l*. : on conviction the weighing instrument is liable to be forfeited.

"Cased" weights.—Weights made of lead or pewter, or any mixture thereof, are not to be stamped or used for trade unless wholly and substantially cased with brass, copper, or iron, and stamped or marked "cased;" but nothing in this section is to prevent the insertion into a weight of such a plug of lead or pewter as is *bonâ fide* necessary for the purpose of adjusting it, and of affixing thereon the stamp of verification—penalty not exceeding 5*l*., second offence 10*l*. (s. 30).

Coin weights must be stamped by the Board of Trade (s. 31).

Counterfeit stamps.—Any person who forges or counterfeits any stamp used under this Act, or wilfully increases or diminishes a weight stamped under this Act—penalty 50*l*.; and any person who knowingly uses, sells, disposes of, or exposes for sale any measure or weight with such counterfeit stamp thereon, or a weight so increased or diminished, is liable to a fine not exceeding 10*l*., such weights and measures to be forfeited (s. 32).

Board of Trade, powers of.—As to the custody and verification of the imperial standards, see ss. 33 to 36, and for verification by Board of Trade of local standards, see ss. 37 and 41.

Powers of Inspector.

Every inspector (*t*) under this Act, when authorized in writing under the hand of a justice of the peace, also every justice of the peace, may at all reasonable times enter premises and inspect all weights, measures, and weighing instruments in use for trade within his district; and any person who neglects or refuses to produce for such inspection all weights, measures, and weighing instruments in his possession or on his premises, or refuses to permit the justice or inspector to examine the same, or obstructs the entry of the justice or inspector, is liable to a fine not exceeding 5*l*., or for a second offence 10*l*. (s. 48).

Breach of duty by inspector.—By s. 49 a penalty not exceeding 5*l*. for each offence is imposed on inspectors for breach of duty or for misconduct under Act.

(*t*) Persons appointed inspectors are required by the Board of Trade to pass an examination in arithmetic, elementary mechanics, and physics, as well as in practical work. Inquiries can be addressed to Superintendent of Weights and Measures, 7, Old Palace Yard, Westminster, S.W.

An inspector appointed after January 1st, 1890, is not to act unless and until he has passed the required examination, but a person appointed inspector may lay an information for the recovery of fines although uncertificated, such fines being recoverable on prosecution of any member of the public. *Crabtree* v. *Bullman*, 60 J. P. 489. The inspector is not to be a seller, maker, or adjuster of weights, etc. (s. 12 of Act).

Local Authority.

The execution as local authority of the Act in a county has been transferred to the county council (Local Government Act, 1888, s. 3).

Bye-laws.—Local authorities, with the approval of the Board of Trade, may make bye-laws regulating the local verification and stamping of weights, measures, and weighing instruments, and the duties of inspectors, and they have power to impose fines not exceeding 20*s*. for the breach of such bye-laws (s. 53).

Expenses incurred by the local authority to be paid out of the local rate (s. 51).

Legal Proceedings.

Procedure.—Offences may be prosecuted and fines and forfeitures recovered on summary conviction before a petty sessional court of two or more justices or a stipendiary magistrate (ss. 56 and 70).

As to disposal of forfeited weights, scales, etc., see s. 57 of Act, *ante*, p. 305.

Limitation for second offences.—No person shall be liable to an increased penalty for a second offence under any section of this Act unless the offence was committed *after a conviction within five years previously for an offence under the same section* (s. 58).

Evidence of possession.—Where any weight, measure, or weighing instrument is found in the possession of any person carrying on trade within the meaning of this Act, or on any premises which, whether a building or in the open air, whether open or inclosed, are used for trade within the meaning of this Act, such person or the owner of such premises shall, until the contrary is proved, be deemed to have such weight, measure, or weighing instrument in his possession for use for trade (s. 59), p. 306.

Appeal from conviction.—See s. 60.

Scales in Markets, etc.

By s. 64 and second part of schedule 6, owner or managers of any public market in Great Britain where goods are exposed or kept for sale shall provide proper scales and balances, and weights and measures, or other machines for the purpose of weighing or measuring all goods sold, offered, or exposed for sale in any such market, and shall deposit the same at the office of the clerk or toll collector of such market, or some other convenient place, and shall have the accuracy of such measures, weights, or weighing instruments tested at least twice in every year by the inspector of weights or measures where the market is situate, and all expenses attending the purchase, adjusting and testing thereof, shall be paid out of the moneys collected out of the tolls in the market.

Goods sold in market, weighing of.—Such clerk or toll collector shall at all reasonable times, when called upon so to do, weigh or measure all

goods which have been sold, offered, or exposed for sale in any such market, upon payment of such reasonable sum as may from time to time be decided upon by the said owners or managers, subject to the approval and revision of the justices in general or quarter sessions assembled. Fine not exceeding 5*l.* (schedule 6, part 2).

Goods sold in market deficient in weight.—Every clerk or toll collector of any public market in Great Britain at all reasonable times may weigh or measure all goods sold, offered, or exposed for sale in any such market; and if upon such weighing or measuring they are found deficient in weight or measure, or otherwise contrary to the provisions of this Act, such clerk or toll collector shall take the necessary proceedings for recovering any fine to which the person selling, offering or exposing for sale, or causing to be sold, offered, or exposed for sale, such goods is liable; and the court convicting the offender may award out of the fine to such clerk or toll collector such reasonable remuneration as to the court seems fit. Penalty not exceeding 5*l.* (s. 64, schedule 6, part 2).

Sale of Coal (52 & 53 Vict. c. 21).

The Weights and Measures Act, 1889, provides that all coal shall be sold by weight only, except by the written consent of the purchaser it is sold by boat-load, or by waggons or tubs, delivered from the colliery into the works of the purchaser.

If any person sells coal otherwise than is required by this section he shall be liable to a fine not exceeding 5*l.* for every such sale (s. 1). See ss. 21, 22, 23, and 24 of Act.

Where a quantity of coal, exceeding 2 cwt., is delivered by means of any vehicle, before any part of the coal is unloaded a ticket in the prescribed form must be delivered or sent by the seller to the purchaser or his servant (*x*).

The seller is liable to a fine of 5*l.* if no such ticket be delivered, or if the quantity of coal delivered be less than that mentioned on the ticket (*x*). The person attending the vehicle is liable to a fine of 5*l.* if he has received such a ticket and refuses or neglects to deliver it to the purchaser, or to show it to an inspector when requested so to do.

If any person in charge of a vehicle in which coal is being carried, wilfully makes any false statement as to the true weight of the vehicle, or wilfully does any act by which either the seller or purchaser is defrauded, he is liable to a fine of 5*l.*, or for a second offence imprisonment. See s. 27 of Coal Act.

Any seller or purchaser of coal, or person in charge of a vehicle in which coal is carried, inspector of weights and measures or other officer appointed for the purpose by the local authority, may require that any coal, or any vehicle used for the carriage of coal in bulk, be weighed or re-weighed by any weighing instrument stamped by an inspector of weights and measures.

If any person obstructs any weighing or re-weighing authorized by this section he shall be liable to a fine not exceeding 5*l.*, or for a second offence imprisonment may be inflicted. See s. 29 of Act.

(*w*) Where the ticket expresses that the purchaser will receive a specific quantity of coal in a specified number of sacks, each containing 2 cwt., no offence is committed if some or one of the sacks contain less than 2 cwt., provided the total amount be delivered. *Godfrey* v. *Radford* (1896), 60 J. P. 615.

(*x*) The merchant is made liable for the neglect of his servant. *Baker* v. *Herd*, 58 J. P. 413.

An inspector has very wide powers with regard to entering any place where coal is kept for sale. He may stop any vehicle carrying coal for sale or delivery to a purchaser, and may weigh any coal found in course of delivery to a purchaser.

If the person in charge of the vehicle has no ticket, then the inspector should ascertain whether it was otherwise sent to the purchaser.

If the coal turn out of less weight than represented by the seller, he is liable to a fine of 5*l*. Obstructing inspector, penalty 5*l*.

Whipping.

25 & 26 Vict. c. 18, Whipping Act, 1862, authorizes punishment of whipping.

Wife.

As to protection of married women (property and person), see p. 228, 229.

Immunity of wife.—A wife cannot be convicted of any larceny, burglary, forgery, or for uttering forged notes, if the offence is committed in the *presence* of her husband, as she is presumed to have acted under his coercion, and such coercion excuses her act, but this presumption may be rebutted if the circumstances of the case show that in point of fact she was not coerced. 1 Hale, 516; *R.* v. *Cohen*, 11 Cox. 99.

In treason, murder, homicide, perjury, and in misdemeanors generally this "coercion" will not avail her.

Property of wife.— Before the Married Women's Property Act, 1882, the only ground on which a wife could proceed against her husband was for personal violence, and since the Act no proceeding is competent except in reference to her separate estate. Every woman shall have in her own name against all persons whatsoever, including her husband, the same civil remedies, and also (subject for proviso regarding husband) the same remedies and redress by way of criminal proceedings for the protection of her own separate property, as if such property belonged to her as a *feme sole*: *Provided always* that no criminal proceeding shall be taken by any wife against her husband (by virtue of Act) *while they are living together* concerning any property claimed by her.

Husband's goods.—By the common law, a woman cannot be convicted of stealing goods belonging to her

husband or to her husband and others, but this has been modified by the Married Women's Property Act, 1882 (Stones' Justices' Manual).

Women and Girls—Protection of.

The Criminal Law Amendment Act, 1885, and the Act 24 & 25 Vict. c. 100 (Offences against the Person), contain special provisions for the protection of women and girls.

Sections 48 to 55 of latter Act relate to rape, abduction, etc.

The following is a synopsis of Act of 1885, an epitome of the sections being given at p. 316, *post*.

Procuration.—Under s. 2 of Criminal Law Amendment Act, 1885 (*y*), it is an indictable misdemeanor to procure women or girls for immoral purposes, or to procure their defilement by threats or fraud or administering drugs (s. 3.)

[No person can be so convicted upon the uncorroborated evidence of one witness only.]

Defilement.—Section 4.—The defilement of any girl under the age of thirteen (*z*) is felony; the attempt is a misdemeanor. Offenders under sixteen may be whipped, p. 317 (*a*).

The evidence of a child of tender years is receivable even though not on oath.

Personation.—[The section contains a clause declaring an offender guilty of rape who induces a married woman to permit him to have connection with her by personating her husband.]

By s. 5 (1), the defilement of or attempt to have unlawful carnal knowledge (*b*) of any girl between thirteen and sixteen years of age is a misdemeanor.

The defilement of or attempt to defile any female idiot, or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, is a misdemeanor.

It shall be a defence to any charge under sub-s. (1) if the person charged can show that he had reasonable cause to believe that the girl was above the age of sixteen; [prosecution must be commenced within three months after commission of offence.]

(*y*) Offences under this Act are not triable at sessions.

(*z*) This section is substituted for 38 & 39 Vict. c. 94, s. 3, in which the age limit was twelve. Consent on the part of the child is no defence to the charge. The evidence of mother as to age is sufficient.

(*a*) A boy under fourteen years of age cannot be convicted of this offence (*R.* v. *Waite*, [1892] 2 Q. B. 600), but on an indictment for it he may be convicted under s. 9 of an indecent assault. *R.* v. *Williams*, [1893] 1 Q. B. 320.

(*b*) A girl can consent to and may be lawfully married at twelve and a boy at fourteen. The word "unlawful" in Act excludes the consummation of marriage.

Section 6.—The owner or occupier, etc., of any premises is liable who permits the defilement of any young girl on his premises (*c*). If girl be under thirteen the offence is a felony.

It shall be a defence to the charge if the person charged can show that he had reasonable cause to believe that the girl was above the age of sixteen.

Abduction.—Under s. 7, the abduction or causing to be taken out of the possession of her parents or guardians any girl under eighteen, with intent to have carnal knowledge of same, is a misdemeanor. See p. 314 and 318.

It shall be a defence to the charge if the person charged can show that he had reasonable cause to believe that the girl was over eighteen years of age.

Detention.—Section 8 deals with the detention of any woman or girl upon any premises against her will, with intent to have carnal knowledge of same; or detention of woman in brothel.

A proviso in this section prohibits any legal proceedings being taken against any woman or girl, who having been deprived of her wearing apparel is subsequently found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel, p. 318 (*d*).

Trial.—Section 9 gives power to jury, on indictment for rape, to convict of certain misdemeanors under ss. 3, 4, or 5 of Act, or of an indecent assault.

Search warrant.—Under s. 10, warrants (*e*) may be issued to search for any woman or girl supposed to be detained in any place for immoral purposes. See p. 318.

A woman or girl shall be deemed to be so detained

(1) If she is under sixteen years of age;

(2) If over sixteen and under eighteen she is detained against her will or the will of parent or guardian.

(3) If above eighteen she is detained against her will. Such woman or girl if found may, by order of justice, be delivered up to her parent or guardian.

The warrant must be executed by *a superintendent, inspector, or other officer of police*, who shall be accompanied by the parent, relative, or guardian, or other person making the information, if such person so desire, unless the justices shall otherwise direct.

Indecency.—Section 11 relates to acts of gross indecency by male persons.

Custody of girl.—Section 12 empowers court on trial of offences under this Act to remove from improper guardianship any girl under the age of sixteen, p. 319.

Brothels.—Under s. 13 any person who keeps or manages a brothel (*f*),

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(*c*) This applies to a mother permitting her daughter's prostitution in her own home. *R.* v. *Webster*, 55 L. J. 63; 50 J. P. 456; 16 Q. B. D. 134.

(*d*) This appears to authorize the girl to take any apparel belonging to to any person in case of need.

(*e*) The warrant may direct the apprehension of any person detaining such girl.

(*f*) A brothel is a place where people of opposite sexes are allowed to resort for illicit intercourse. A house occupied by one woman for purpose

or being the occupier, etc., of any premises allows them to be used as a brothel, or for the purposes of habitual prostitution, or being landlord or agent lets premises for such purpose, shall on summary conviction (under S. J. Act) be liable to a penalty of 20*l.*, or imprisonment for three months; second conviction, penalty 40*l.*, or four months' imprisonment.

Sections 14 to 19 relate to procedure, etc, p. 320.

Offences against the Person Act.

(24 & 25 Vict. c. 100, ss. 53—55.)

Abduction.—The offence, which is felony, resolves itself into three divisions (see p. 360, *post*)—

(1) The taking away or detaining against her will with intent to marry or carnally know of any woman who has any interest in any property; or

(2) The taking away with like intent against will of parents or guardians of any such woman being under the age of twenty-one; or

(3) The forcible detention, with like intent, of any woman.

By s. 55, the taking away of any unmarried girl under sixteen (*g*) out of the possession and against the will of her father or mother or lawful guardian, is a misdemeanor.

The offences are not triable at sessions.

Under s. 7 of Criminal Law Amendment Act, 1885, the abduction of any girl under eighteen is a misdemeanor. See p. 313, *ante*; also 319.

Seduction is not a criminal offence, but civil proceedings may be taken by the parent.

(24 & 25 Vict. c. 100, ss. 58, 59.)

Abortion.—Three classes of persons may be guilty of crime under this heading (see p. 361, *post*)—

(1) Any woman being with child (*h*) who, with intent to procure miscarriage, administers to herself any poison or noxious thing, or uses any instrument, etc.—Felony.

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of her own prostitution is not a brothel. *Singleton* v. *Ellison* (1895), 64 L. J. 123; 59 J. P. 119. Notice from a credible person to a landlord that his house is used as a brothel seems to be sufficient to render him liable (see 86 L. T. 13) unless he redresses the evil.

(*g*) When the girl is under sixteen it is immaterial whether she consented to go away or not, and it is no defence that the defendant believed the girl to be over sixteen. *R.* v. *Prince*, 45 L. J. 122; 39 J. P. 676; also *R.* v. *Hibbert*, 33 J. P. 242.

(*h*) When the woman is charged it is necessary to show that she was actually with child, which is not necessary where another person is charged with the offence, but the woman may be charged with conspiracy with others although not in fact pregnant. *R.* v. *Cross, Whitchurch and Others*, 24 Q. B. D. 420; 54 J. P. 472; 62 L. T. 124.

(2) Any other person doing the same with a like intent, whether the woman be with child or not—Felony.

(3) Any person supplying or procuring drugs or instruments for a like purpose—Misdemeanor.

The offence is not triable at sessions.

There is no administering unless the poison is taken into the stomach; the nature of the poison or noxious thing must be proved, as if it be of a harmless character there is no offence. The statute is satisfied if the person who supplies the drug, etc., intends it to be used for the purpose of procuring miscarriage, though it may not be so used.

(24 & 25 Vict. c. 100, ss. 48 and 63.)

Rape is the carnal knowledge of a female forcibly and against her will. The slightest penetration constitutes carnal knowledge.

A male under fourteen years of age is presumed by law incapable of committing a rape. He may, however, be convicted of an assault, or of aiding or abetting others to commit a rape. See also title RAPE, p. 262.

Personation.—Section 4 of Criminal Law Amendment Act, 1885, defines as rape the obtaining connection with a married woman by personating her husband.

Regarding steps to be taken in investigating cases of rape, see p. 29, *ante*.

(24 & 25 Vict. c. 100, ss. 52, 63.)

Indecent Assault.—Whosoever shall be convicted of any indecent assault, or of any attempt to commit an indecent assault, shall be guilty of a misdemeanor. See also TRIAL, p. 313.

See also p. 313, *ante*, as to cases of gross indecency.

43 & 44 Vict. c. 45, enacts that it shall be no defence to a charge on indictment for an indecent assault on a young person under the age of thirteen to prove that he or she consented to the act of indecency.

The unsworn evidence of a child is now admissible on the charge by s. 15 of the Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41).

(24 & 25 Vict. c. 100, ss. 61—63.)

Unnatural Offences.—As to "infamous crime" and "bestiality," see Statutory Provisions, p. 361, *post*.

The following is an epitome of the sections of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69).

Part 1.

Section 1.—**Procuration.**—To procure or attempt to procure any girl or woman under 21 years of age, not being a prostitute or of known immoral character, to have unlawful carnal connexion with any person; or

To procure or attempt to procure any woman or girl to become a common prostitute; or

To procure or attempt to procure any woman or girl to leave the United Kingdom, with intent that she may become an inmate of a brothel elsewhere; or

To procure or attempt to procure any woman or girl to leave her usual place of abode in the United Kingdom (such place not being a brothel), with intent that she may, for the purposes of prostitution, become an inmate of a brothel within or without the Queen's dominions, is a *misdemeanor* under ss. 1 and 2 of Act.

Section 3.—To attempt by threats or intimidation to procure any woman or girl to have any unlawful carnal connexion within or without the Queen's dominions; or

By false pretences or false representations to procure any woman or girl not being a prostitute or of known immoral character to have unlawful carnal connexion within or without the Queen's dominions (*i*); or

To apply, administer to, or cause to be taken by any woman or girl any drug, matter, or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connexion with such woman or girl is a *misdemeanor*.

Proviso.—But no person shall be convicted of an offence under this section upon the evidence of *one witness only*, unless such witness be corroborated in some material particular by evidence implicating the accused.

Section 4.—**Defilement.**—Any person who—

Unlawfully and carnally knows any girl *under the age of thirteen years* shall be guilty of Felony, and be liable to penal servitude for life (*k*). The attempt is a Misdemeanor.

As to personating husband, see p. 315.

(*i*) See 24 & 25 Vict. c. 100, s. 49—*repealed*.

(*k*) 38 & 39 Vict. c. 94, is repealed. See *Schedule to Act*; also p. 315.

[*Section 52 of 24 and 25 Vict. c. 100, made it a misdemeanor to indecently assault any female or to make "any attempt to have carnal knowledge of any girl under twelve years of age." The words quoted have been repealed, but the provision as to indecent assault remains. It is difficult to imagine an attempt to carnally know which is not also an indecent assault. The former offence is much more difficult of proof than the latter, and cannot be tried at quarter sessions. The punishment is the same for both.* Therefore, where the girl did not consent, or having consented, was under the age of thirteen years, in most cases it will be better to indict for indecent assault only. *But not if one of the witnesses is very young; for upon the hearing of a charge under the new section the testimony of a child too young to understand the nature of an oath may be received if the court believes the witness understands the duty of speaking the truth. If the testimony so received is corroborated by some other material evidence the court may act on it. If the offender is under sixteen years of age he may be flogged and sent to a reformatory.*]

Section 5.—To unlawfully and carnally know or attempt to have carnal knowledge of any girl (*l*) above thirteen and under sixteen years of age is a misdemeanor. [No prosecution shall be commenced for this offence more than three months after commission of offence. See also s. 7.]

Any person who unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any female idiot, or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an *idiot or imbecile,* shall be guilty of a Misdemeanor.

Section 6.—Any person who being the *owner or occupier of any premises,* or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl of such age as in this section mentioned to resort to or be in or upon such premises [even when it is her home] for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be

(*l*) The section manifestly applies whether the girl consents or not. But it leaves s. 2 of 43 & 44 Vict. c. 45 untouched, so that the effect seems to be that where a girl is between thirteen and sixteen years old her consent is material in a charge of indecent assault, but immaterial if the assault amounts to an attempt to have carnal knowledge.

with any particular man or generally, shall be guilty of felony if girl be under thirteen years of age, but if over thirteen and under sixteen the offence is a Misdemeanor. See also s. 7.

Section 7.—**Abduction**.—Any person who—

With intent to take (or cause to be taken) out of the possession of parent or guardian any unmarried girl under the age of eighteen years with intent that she shall be unlawfully and carnally known by any man is a misdemeanor.

Proviso.—It shall be a sufficient defence to any charge under ss. 5, 6, and 7, if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe that the girl was of or above the age prescribed by such sections respectively (*m*). See also p. 314.

Section 8.—**Detention**.—It is made a misdemeanor to detain any female against her will—

(1.) In any premises with intent that she may be unlawfully and carnally known; or

(2.) In any brothel.

Detaining such female's clothes is equivalent to detaining herself.

Section 9.—**Trial**.—The court may convict of misdemeanor on the trial of a charge of felony. See p. 313.

Section 10.—**Search Warrants**.—If it appears to any justice of the peace, on information made before him on oath by any parent, relative, or guardian of any woman or girl, or any other person who in the opinion of the justice is *bonâ fide* acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such justice, such justice may issue a warrant authorizing any person named therein to search for, and, when found, to take to and detain in a place of safety such woman or girl until she can be brought before a justice of the peace; and the justice of

(*m*) It is difficult to say what will be the effect of this proviso upon s. 55 of 24 & 25 Vict. c. 100, because no person is to be exempted from liability under any other penal enactment (s. 16), it was held in *R.* v. *Prince* (p. 314) that such reasonable belief on the part of the defendant was immaterial. If the girl is under sixteen years it will be safest to proceed under the old enactment.

the peace before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

The justice of the peace issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a justice, and proceedings to be taken for punishing such person according to law.

A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man, whether by any particular man or generally, and—

(a.) Either is under the age of sixteen years; or

(b.) If over sixteen and under eighteen years, is so detained against her will, or against the will of her father or mother, or of any other person having the lawful care or charge of her; or

(c.) If of or above the age of eighteen years she is so detained against her will.

Any person authorized by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be by force) any house, building, or other place specified in such warrant, and may remove such woman or girl therefrom (*n*).

Every warrant issued under this section shall be addressed to and executed by some *superintendent, inspector, or other officer of police*, who shall be accompanied by the parent, relative, or guardian, or other person making the information, if such person so desire, unless the justice shall otherwise direct.

Section 11.—**Indecency.**—Any male person who in public or private commits, or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person, shall be guilty of a misdemeanor. See also p. 315.

Section 12.—**Custody of girl.**—Where it is proved that the seduction or prostitution of a girl under sixteen has been

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(*n*) The Industrial Schools Act authorizes any person to bring before the court any girl under fourteen years frequenting a brothel without a warrant; but does not authorize a search of premises to find her. The intent to defile her need not be proved as in the new Act.

caused, encouraged, or favoured by parent or guardian, it shall be in the power of the court to divest such parent, guardian, etc., of all authority over her, and to appoint any person or persons willing to take charge of such girl to be her guardian until she has attained the age of twenty-one.

Part II.

Brothels.—Section 13.—Any person who :—(1) Keeps, or manages, or assists in the management of a brothel : or (2) Being the tenant, lessee, or occupier of any premises, knowingly permits such premises to be used as a brothel ; or (3) Being the lessor or landlord of any premises or the agent of such lessor or landlord, lets the same with the knowledge that such premises are to be used as a brothel, or is party to the continued use of premises as such shall, on summary conviction (Summary Jurisdiction Acts) be liable—

(1.) To penalty of 20*l.*, or imprisonment for three months ;

(2.) On second conviction to a penalty of 40*l.*, or imprisonment for four months ;

in case of a third or subsequent conviction such person may be required to enter into a recognizance to be of good behaviour for twelve months. See note (*f*), p. 313.

Appeal.—The enactments for encouraging prosecutions of disorderly houses contained in ss. 5—7 of 25 Geo. 2, c. 36, as amended by 58 Geo. 3, c. 70, s. 7, shall, with the necessary modifications, be deemed to apply to prosecutions under this section, and the said enactments shall, for the purposes of this section, be construed as if the prosecution on such enactments mentioned included summary proceedings under this section as well as a prosecution on indictment.

Part III.

Procedure.—Sections 14—19 relate to costs, etc.

Section 20.—Every person charged with an offence under this Act or under s. 48 and ss. 52—55 of 24 & 25 Vict. c. 100 shall be competent but not compellable witnesses.

Schedule (*Repeal*).—Section 49 of 24 & 25 Vict. c. 100 is repealed, and in s. 52, the words "or any attempt to have carnal knowledge of any girl under twelve years of age" ; also 38 & 39 Vict. c. 94 (Act of 1875).

Wrecks.

Under the Merchant Shipping Acts the Board of Trade have throughout the United Kingdom the general superintendence of all matters relating to wreck, and can appoint receivers of wreck.

Receivers have power in cases of wreck to summon help and to employ boats, waggons, etc., and persons refusing to assist are liable to a fine of 10*l*.

In absence, etc., of receiver the following persons are in case of wreck or accident authorized to act:—Any principal officer of customs or coastguard or inland revenue, sheriffs, justices, naval and military commissioned officers on full pay.

The officer acting to be considered the agent of the receiver, to whom goods or articles are to be handed over.

Salvage.—Persons who assist in saving lives of persons, or cargo, etc., of any ship stranded or wrecked are entitled to reasonable amount of salvage from owners.

Every person who shall wrongfully carry away or remove any part of any ship or boat stranded or in danger of being stranded or otherwise in distress on or near the shore of any sea or tidal water, or any part of the cargo or apparel thereof of any wreck, or who shall endeavour in any way to impede or hinder the saving of such ship, boat, cargo, apparel, or wreck, or who shall secrete any wreck or obliterate or deface any marks thereon—penalty not exceeding 50*l*. above any other penalty or punishment to which he may be subject for such offence.

Under the provisions of the Larceny Act, persons found in illegal possession of shipwrecked goods are liable to penalties, as also are persons found offering for sale shipwrecked goods unlawfully taken (24 & 25 Vict. c. 96, ss. 65 and 66).

By 24 & 25 Vict. c. 97, ss. 47, 48, 49, the exhibiting false signals, etc., with intent to bring any ship, vessel, boat, etc., into danger is felony, as is also the removing or concealing buoys or other sea marks, or the destroying wrecks or any articles belonging thereto.

By 24 & 25 Vict. c. 100, whosoever shall unlawfully and maliciously prevent or impede any person being on board of, or having quitted any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore in his endeavour to save his life, or shall unlawfully and maliciously prevent and impede any person in his endeavour

to save the life of any such person as in this section first aforesaid, shall be guilty of felony.

Punishment, penal servitude for life or imprisonment for two years (s. 17). Not triable at sessions.

Whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of a misdemeanor (s. 37).

Regarding offences under 24 & 25 Vict. cc. 96, 97, and 100, referred to above, see Appendix, *post*.

The following directions (*a*) *are those given by Dr. H. R. Silvester for restoring the apparently dead or drowned:—*

1.—Send immediately for medical assistance, blankets, and dry clothing, but proceed to treat the patient *instantly*, securing as much fresh air as possible.

The points to be aimed at are—first, and immediately, the *restoration of breathing*; and secondly, after breathing is restored, the *promotion of warmth and circulation*.

The effort to restore life must be persevered in until the arrival of medical assistance, or until the pulse and breathing have ceased for at least an hour.

Treatment to Restore Natural Breathing.

Rule 1.—*To maintain a Free Entrance of Air into the Windpipe*—Cleanse the mouth and nostrils; open the mouth; draw forward the patient's tongue, and keep it forward; an elastic band over the tongue and under the chin will answer this purpose. Remove all tight clothing from about the neck and chest.

Rule 2.—*To adjust the Patient's Position*—Place the patient on his back on a flat surface, inclined a little from the feet upwards; raise and support the head and shoulders on a small firm cushion or folded article of dress placed under the shoulder-blades.

Rule 3.—*To imitate the Movements of Breathing*—Grasp the patient's arm just above the elbow, and draw the arms

(*a*) Approved by the Royal Medical and Chirurgical Society.

gently and steadily upwards, until they meet above the head (this is for the purpose of drawing air into the lungs); and keep the arms in that position for two seconds. Then turn down the patient's arms, and press them gently and firmly for two seconds against the sides of the chest (this is with the object of pressing air out of the lungs. Pressure on the breast-bone will aid this).

Repeat these measures alternately, deliberately, and perseveringly, fifteen times in a minute, until a spontaneous effort to respire is perceived, immediately upon which cease to imitate the movements of breathing, and proceed to *induce circulation and warmth.*

Should a warm bath be procurable, the body may be placed in it up to the neck, continuing to imitate the movements of breathing, Raise the body for twenty seconds in a sitting position, dash cold water against the chest and face, and pass ammonia under the nose. The patient should not be kept in the warm bath longer than five or six minutes.

Rule 4.—*To excite Inspiration*—During the employment of the above method excite the nostrils with snuff or smelling salts, or tickle the throat with a feather. Rub the chest and face briskly, and dash cold and hot water alternately on them.

Treatment after Natural Breathing has been Restored.

Rule 5.—*To induce Circulation and Warmth*—Wrap the patient in dry blankets and commence rubbing the limbs upwards, firmly and energetically. The friction must be continued under the blankets or over the dry clothing.

Promote the warmth of the body by the application of hot flannels, bottles or bladders of hot water, heated bricks, etc., to the pit of the stomach, the armpits, between the thighs, and to the soles of the feet. Warm clothing may generally be obtained from by-standers.

On the restoration of life, when the power of swallowing has returned, a teaspoonful of warm water, small quantities of wine, warm brandy and water, or coffee should be given. The patient should be kept in bed, and a disposition to sleep encouraged. During re-action large mustard plasters to the

chest and below the shoulders will greatly relieve the distressed breathing.

Another method of "restoring the apparently drowned" is given in The Sailor's Pocket Book, by Admiral Bedford. The system is a good one (by Dr. Howard), and in vogue in the United States.

APPENDIX.

DIGEST OF STATUTES.

ARRANGEMENT.

PAGE

I.—Criminal Law Consolidation Acts.

Accessories and Abettors Act, 1861 326
Larceny Act, 1861 327
Malicious Damage Act, 1861 340
Forgery Act, 1861 348
Coinage Offences Act, 1861 350
Offences against the Person Act, 1861 355

II.—Licensing Acts.

Alehouse Act, 1828 363
Licensing Act, 1842 364
Refreshment Houses Act, 1860 364
Wine and Beerhouse Act, 1869 365
Licensing Act, 1872 366
Licensing Act, 1874 375
Beer Dealers Retail Licences (Amendment) Act, 1882 379

III.—Indictable Offences and Summary Jurisdiction Acts.

Indictable Offences Act, 1848 380
Summary Jurisdiction Act, 1848 381
Summary Jurisdiction Act, 1879 384
Summary Jurisdiction (Process) Act, 1881 394

IV.—Police Acts, 1839 to 1893.

County Police Act, 1839 395
County Police Act, 1840 398
County and Borough Police Act, 1856 401
County Police Act, 1857 404
County and Borough Police Act, 1859 404
Police Superannuation Act, 1865 405
Rules for County Police (County Police Act, 1839, *s.* 3) 406
Police Disabilities Removal Act, 1887 *and* 1893 .....412—413
Police Returns Act 413
Police Act, 1890 *and Police Act*, 1893 ..... 414—429
Police (Property) Act, 1897 432

DIGEST OF STATUTES.

I. — Criminal Law Consolidation Acts.

ACCESSORIES AND ABETTORS ACT, 1861.

(24 & 25 VICT. C. 94.)

An Act to consolidate and amend the Law relating to Accessories to and Abettors of Indictable Offences (*a*). [6th August, 1861.]

ACCESSORIES BEFORE THE FACT.

Section 1.—Whosoever shall become an accessory before the fact to any felony, may be indicted, and punished in all respects as if he were a principal felon.

Section 2.—Whosoever shall counsel, procure, or command any other person to commit any felony, shall be guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, or may be indicted and convicted of a substantive felony whether the principal felon shall or shall not have been previously convicted.

ACCESSORIES AFTER THE FACT.

Section 3.—Whosoever shall become an accessory after the fact to any felony, may be indicted and convicted either as an accessory after the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony whether the principal felon shall or shall not have been previously convicted.

Section 4. —Every accessory after the fact to any felony (except where it is otherwise specially enacted), shall be liable to imprisonment for any term not exceeding two years.

Section 5. —As to prosecution of accessory after principal has been convicted, but not attainted.

Section 6.—Several accessories may be included in the same indictment.

Section 7.—Where any felony shall have been wholly committed within *England* or *Ireland*, the offence of any person who shall be an accessory either before or after the fact to any such felony may be dealt with by any

(*a*) See "ACCESSORIES" (General Subjects), *ante*.

court which shall have jurisdiction to try the principal felony, and in every other case the offence of any person who shall be an accessory either before or after the fact to any felony may be dealt with by any court which shall have jurisdiction to try the principal felony or any felonies committed in any county or place in which such person shall be apprehended or be in custody, whether the principal felony shall have been committed on the sea or on the land, and whether within Her Majesty's dominions or without, or partly within and partly without: Provided that no person who shall be once duly tried either as an accessory or for a substantive felony, shall be liable to be afterwards prosecuted for the same offence.

ABETTORS IN MISDEMEANORS.

Section 8.—Whosoever shall aid, abet, counsel, or procure the commission of any misdemeanor, shall be liable to be punished as a principal offender.

Section 9.—As to offences within jurisdiction of Admiralty.

LARCENY ACT, 1861.

(24 & 25 VICT. C. 96.)

An Act to consolidate and amend the Law relating to Larceny.

[6th August, 1861.]

LARCENY GENERALLY.

Section 1 defines certain terms:—The term "property" includes every description of real and personal property. "Night" for purposes of Act, shall be deemed to commence at 9 P.M. and conclude at 6 A.M.

Section 2.—All larcenies (whatever be the value) shall be deemed to be of the same nature.

Section 3.—Whosoever, being a bailee of any chattel, money, or valuable security, shall fraudulently take or convert the same to his own or other use, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny. [Not to extend to offences punishable on summary conviction.]

Section 4.—Whosoever shall be convicted of simple larceny or like offence shall (except in cases otherwise provided for) be liable to be kept to penal servitude for five years, or to be imprisoned for two years. Males under sixteen may be whipped.

Section 5.—It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing, *not exceeding three*, which may have been committed by him against the same person within the space of six months from the first to last of such acts, and to proceed thereon for all or any of them.

Section 6.—If upon the trial of any indictment for larceny it shall appear that the property alleged in the indictment to have been stolen at one time was taken at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed (provided the "takings" be within provision of last section).

Section 7.—**Previous conviction.**—Whosoever shall commit the offence of simple larceny after a previous conviction for felony, whether such conviction shall have taken place upon an indictment or under the provisions of

18 & 19 Vict. c. 126, shall be liable to be kept in penal servitude for any term not exceeding ten years and not less than five years, or to be imprisoned for two years. Males under sixteen may be whipped. See also p. 339.

Section 8.—Larceny after conviction of an indictable misdemeanor punishable under the Act renders the offender liable to seven years' penal servitude or two years' imprisonment.

Section 9.—Larceny after two summary convictions under 7 & 8 Geo. 4, cc. 29, 30; 9 Geo. 4, cc. 55, 56; 10 & 11 Vict. c. 82; 11 & 12 Vict. c. 59; 14 & 15 Vict. c. 92; 24 & 25 Vict. c. 97, renders the offender liable to seven years' penal servitude or two years' imprisonment.

Larceny of Cattle, Etc.

Section 10.—To steal any horse, mare, gelding, etc., or any bull, cow, ox, etc., or any sheep, or lamb, is felony. Punishment, fourteen years' penal servitude or two years' imprisonment.

Section 11.—To wilfully kill any animal, with intent to steal any part thereof, is felony. Punishment, the same as on conviction for feloniously stealing.

Sections 12 to 15.—**Stealing deer, etc.**—It is an offence to hunt, kill, or wound deer kept in an uninclosed place. Penalty, 50*l*. A second offence is felony, as is also the same offence committed in an inclosed place.

To have in possession without satisfactorily accounting for the same, any deer, or the head, skin, etc. Penalty, 20*l*. It is an offence to destroy any part of the fence on land where deer are kept.

Under s. 16, deer keepers or their assistants can seize any snares or dogs of any person entering any forest or any inclosed land where deer are kept with intent to hunt, etc., the same; to unlawfully beat or wound such keeper is felony.

Section 17.—**Hares, rabbits.**—Whosoever shall unlawfully and wilfully, between first hour after sunset and last hour before sunrise, take or kill any hare or rabbit in any warren or ground used for the breeding or keeping of same (whether inclosed or not) shall be guilty of a misdemeanor; whosoever shall unlawfully and wilfully, between last hour before sunrise and first hour after sunset, take or kill any hare or rabbit in any such warren or ground, or shall at any time set or use therein any snare or engine for the taking of hares or rabbits, shall, on conviction thereof before a justice, be liable to a penalty of 5*l*. [Special proviso *re* sea-banks in county of Lincoln.]

Section 18.—**Dogs.**—Whosoever shall steal any dog (*b*) shall, on conviction thereof before two justices, be liable to imprisonment for six months, or shall forfeit and pay, over and above the value of the said dog, such sum of money not exceeding 20*l*., as to the said justices shall seem meet. [*A second offence is a misdemeanor. Punishment, eighteen months' imprisonment.*]

Section 19.—Whosoever shall unlawfully and knowingly have in his possession or on his premises any stolen dog, or the skin thereof, shall, on conviction before two justices, be liable to a fine not exceeding 20*l*. [*A second similar offence is a misdemeanor. Punishment, eighteen months' imprisonment.*]

(*b*) An indictment will not lie for obtaining a dog by false pretences, dogs not being chattels. *R.* v. *Robinson*, 28 L. J. 58.

Section 20.—To corruptly take any money or reward for aiding any person to recover any dog stolen, etc., or in possession of any person not being the owner thereof, is a misdemeanor.

Section 21.—**Stealing beasts, birds, etc.**—To steal any bird, beast, or other animal ordinarily kept in a state of confinement or for any domestic purpose (*c*), not being the subject of larceny at common law, or to wilfully kill any such bird, beast, or animal, with intent to steal the same or any part thereof, is punishable by fine or imprisonment.

Section 22.—If any such bird, or the plumage thereof, or any dog, or any such beast, or skin thereof, or any such animal or part thereof, shall be found in the possession or on the premises of any person, any justice may restore the same to the owner; and any person in whose possession such bird, beast, etc., is found (such person knowing same to be stolen) shall be liable to penalties as in last preceding section.

Section 23.—**Pigeons.**—To unlawfully and wilfully (*d*) kill, wound, or take any house-dove or pigeon under such circumstances as shall not amount to larceny at common law, is punishable on summary conviction by a fine (over and above value of bird) not exceeding 2*l*.

Section 24.—**Fish.**—Whosoever shall unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein, shall be guilty of a *misdemeanor*; whosoever shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as hereinbefore mentioned, but which shall be private property, or in which there shall be any private right of fishery, shall, on conviction (*e*) before a justice, be liable to a penalty of 5*l*. over and above the value of fish taken or destroyed. Provision not to extend to persons angling in daytime, to whom other penalties attach. Proviso as to offences committed on borders of parish, etc.

Section 25.—If any person shall be found fishing against provisions of Act, the owner of fishery, his servant, or any person authorized by him, may demand from such offender any rod, net, or other implement for taking or destroying fish then in his possession, and in case of non-delivery, may seize

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(*c*) The repealed statute was confined to birds and beasts, but the present section embraces other animals ordinarily kept for any domestic purpose, and will include cats (Greaves, p. 118.)

The beasts, birds, and animals which are not the subject of larceny at common law (*i.e.*, simple larceny punishable on indictment), and are within the operation of this statute when in the state described, are bears, foxes, monkeys, apes, polecats, cats, ferrets, thrushes, singing birds in general, parrots, and squirrels (First Report Criminal Law Com., p. 14), and others probably kept for whim, profit, or pleasure, as badgers, hawks, herons, falcons, goats, rooks, for all these are animals *feræ naturæ*, and although reclaimed, do not serve for the food of man (Stone's Justices' Manual).

(*d*) The above provision, however, does not apply where a person under a claim of right kills a pigeon which is doing mischief upon his land. *Taylor* v. *Newman*, 32 L. J. 186.

(*e*) If a claim of right to take the fish be set up with some show of reason, it will oust the jurisdiction of the justices to convict under the above provision. *R.* v. *Stimpson*, 32 L. J. 208.

and take the same from him for the use of such owner: Provided that any person angling in the daytime from whom any implement shall be taken, shall by the taking or delivering thereof be exempted from the payment of any damages or penalty.

Section 26.—**Oysters.**—The stealing of oysters from oyster bed, fishery, etc., is felony, and punishable as simple larceny; and whosoever shall unlawfully use any dredge, net, etc., in any oyster bed, fishery, etc., being the property of any other person, shall be guilty of a misdemeanor. Punishment, three months' imprisonment. [Exception as to fishing for floating fish within limits of oyster fishery.]

Written Instruments.

Section 27.—To steal, or fraudulently destroy, or cancel any valuable security, is felony.

Section 28.—To steal, or fraudulently destroy, cancel, or conceal any document of title to lands, is felony.

Section 29.—To steal, or for any fraudulent purpose destroy, cancel, obliterate, or conceal, either during the life of the testator or after his death, any will, codicil, or testamentary instrument, is felony. Punishment, penal servitude for life, or two years' imprisonment.

[*The criminal proceeding does not affect the civil remedy, and no person is liable to be convicted if, before he is charged with the offence, he has first disclosed such act on oath in consequence of process of court of law or bankruptcy.*]

Section 30.—To steal, or for any fraudulent purpose take, or to unlawfully and maliciously cancel, obliterate, or destroy any record, writ, return, deposition, etc., or any original document of any court of record, or document relating to the business of any office under Her Majesty, etc., is felony.

Things attached to or Growing on Land.

Section 31.—**Metal.**—Whosoever shall steal, or sever, or break with intent to steal, any glass or woodwork belonging to any building, or any lead, iron, or other metal, or any utensil or fixture fixed to any building, or in any land being private property, or for a fence to garden, etc., or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground, shall be guilty of felony. Punishment, as for simple larceny.

[*In the case of any such thing fixed in any square, street, etc., it shall not be necessary to allege the same to be the property of any person.*]

Trees.—Section 32.—Whoever shall steal, or shall cut, break, or damage with intent to steal, any tree, shrub, or underwood, growing in any park, garden, orchard, or avenue, or in ground adjoining any dwelling-house, if injury done shall exceed 1*l.*, or if growing elsewhere 5*l.*, shall be guilty of felony. Punishment, as for simple larceny.

Section 33.—The stealing or damaging, etc., with intent to steal, any tree, shrub, etc., *wheresoever growing*, if the injury done amounts to 1*s.*, is punishable summarily—for first offence, by fine of 5*l.* (and value); for second offence, by imprisonment twelve months; [*on subsequent conviction the offence is felony*].

Section 34.—**Fences.**—Whosoever shall steal, or shall cut, break, or throw down with intent to steal, any part of *any live or dead fence*, etc., or any stile or gate, etc., is punishable by fine (5*l.* and value) on summary conviction ; second offence, imprisonment twelve months.

Section 35.—Any person found in possession of any tree, shrub, fence, wood, etc. (of value of 1*s.* at least), not being able satisfactorily to account for same, shall, on summary conviction, forfeit and pay over and above value of article any sum not exceeding 2*l.*

Section 36.—**Fruit.**—The stealing or (*f*) damaging, etc., with intent to steal, etc., any plant, root, fruit, or vegetable production growing in any garden, orchard, hothouse, etc., is punishable, on summary conviction, by imprisonment six months, or fine 20*l.* (with value).

Section 37.—**Vegetable productions.**—Whosoever shall steal, or shall destroy or damage with intent to steal, any cultivated root (*g*) or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, and not being a garden, orchard, pleasure ground, or nursery ground shall, on summary conviction, be liable to imprisonment one month, or to fine 20*l.* (and value) ; liability for subsequent offences, imprisonment not exceeding six months.

Larceny from Mines.

Section 38.—Whoever shall steal, or sever with intent to steal, the ore of any metal, manganese, black lead, etc., or any coal from any mine, or vein thereof, shall be guilty of felony. Punishment, two years' imprisonment.

Section 39.—Miners employed in or about any mine, removing any ore, etc., with intent to defraud any proprietor, or workman, shall be guilty of felony. Punishment, two years' imprisonment.

Larceny from the Person.

Section 40.—**Robbery.**—Whosoever shall rob any person, or shall steal any chattel, money, or valuable security from the person of another, shall be guilty of felony. P. S. fourteen years, or two years' imprisonment.

Section 41.—If upon the trial of any person upon any indictment for robbery it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not be entitled to be acquitted, but the jury may find that the defendant is guilty of an assault with intent to

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(*f*) The right to take *apples on branches* overhanging the offender's garden is a moot point. The cases are referred to in 32 J. P. 525.

(*g*) This section omits the word "fruit," so that it is doubtful whether it applies unless the root or plant be stolen (32 J. P. 462).

In *R.* v. *Bramby* (17 L. T. 261), it was held that stealing clover growing in a field and cut by the defendant was punishable under the statute as stealing a cultivated root (32 J. P. 462).

Mushrooms.—Cultivated mushrooms might fall within this section, but there is no provision applicable to mushrooms growing in the usual spontaneous manner, and they are not the subject of larceny at common law. See *R.* v. *Wallace*, 50 J. P. 281 ; see also p. 198, *ante*.

The remedy is by civil action in county court, which is practically worthless ; but see a recent decision (*re* substantial damage) of Queen's Bench in *Hamilton* v. *Bone*, 52 J. P. 726. See also p. 198, *ante*.

rob; and defendant shall be liable to be punished as if he had been convicted for felonious assault with intent to rob; person so tried cannot be re-tried.

Section 42.—Whosoever shall assault any person with intent to rob shall be guilty of felony. Punishment (except where greater punishment is provided), penal servitude for five years, or two years' imprisonment.

Section 43.—Robbery or assault with intent to rob by a person armed, or robbery, etc., by two or more persons, or robbery accompanied by wounding, personal violence, etc., is felony. P. S. for life, or two years' imprisonment.

Section 44.—**Menaces.**—To send, etc., knowing the contents thereof, any *letter or writing* demanding money, etc., with menaces, without reasonable cause, is felony. P. S. for life, or two years' imprisonment. Males under sixteen may be whipped.

Section 45.—Demanding money, etc., with menaces (*h*) or by force, with intent to steal the same, is felony. P. S. for five years, or two years' imprisonment.

Section 46.—To send, etc., knowing the contents thereof, any *letter or writing* threatening to accuse any person of crime—punishable with death, or seven years' penal servitude; or rape, or of any infamous crime, with intent to extort money, etc., is felony. P. S. for life, or two years' imprisonment. Males under sixteen may be whipped.

Infamous crime.—The abominable crime of buggery committed with mankind or with beast, and every assault with intent, or attempt to commit the same, and every solicitation, etc., to induce any person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this Act.

Section 47.—To accuse, or threaten to accuse, any person of any of the infamous or other crimes referred to in the last preceding section, with intent to extort money, etc., is felony. P. S. for life, or imprisonment for two years. Males under sixteen may be whipped.

Section 48.—**Threats.**—To compel or induce any person by violence or threat to execute, alter, or destroy any valuable security, or to execute any deeds, etc., with intent to defraud, is felony. P. S. for life, or two years' imprisonment.

Section 49.—It shall be immaterial whether the menaces or threats hereinbefore mentioned be of violence, injury, or accusation to be caused or made by the offender or by any other person.

(*h*) To constitute the offence of demanding money with menaces, under 24 & 25 Vict. c. 96, s. 45, the menace or threat must be of a character to produce in a reasonable man some degree of alarm or bodily fear, and such alarm must be of a nature and extent to unsettle the mind upon which it operates, and take away that free voluntary action which constitutes consent. Where, therefore, persons had obtained money from one by means of a threat that they would execute a pretended warrant of distress, it was held that it was a question for the jury whether the threat was made with such gestures and demeanor, or with such unnecessarily violent acts, or under such circumstances of fear and intimidation as to excite either fear or alarm. *R.* v. *Walton*, 7 L. T. 754.

BURGLARY, HOUSEBREAKING, ETC.

Section 50.—**Sacrilege.**—To break and enter any *church*, *chapel*, *meeting-house*, or other place of Divine worship, and commit any felony therein, or being in any such place to commit any felony therein and break out of same, is felony. P. S. for life, or imprisonment for two years.

Section 51.—**Burglary.**—Whosoever shall enter the dwelling-house of another with intent to commit any felony therein, or being in such dwelling-house shall commit any felony therein, and shall in either case break out of the said dwelling-house *in the night*, shall be deemed *guilty of burglary*.

Section 52.—Whosoever shall be convicted of the crime of burglary shall be liable, at the discretion of the court, to be kept in penal servitude for life, or to be imprisoned for any term not exceeding two years.

Section 53.—No building, although within the same curtilage with any dwelling-house and occupied therewith, shall be deemed to be part of such dwelling-house for any of the purposes of this Act *unless there shall be a communication between such building and dwelling-house*, either immediate or by means of a covered and inclosed passage leading from the one to the other.

Section 54.—Whosoever shall enter any dwelling-house in the night with intent to commit any felony therein shall be guilty of felony. P. S. seven years, or two years' imprisonment.

Section 55.—Whoever shall break or enter any building and commit any felony therein, such building being within the curtilage of a dwelling-house and occupied therewith, but not being part thereof according to the provisions hereinbefore mentioned, or being in any such building shall commit any felony therein and break out of the same, shall be guilty of felony. P. S. fourteen years, or two years' imprisonment.

Section 56.—Whosoever shall *break and enter* any dwelling-house, schoolhouse, shop, warehouse, or counting-house, and commit any felony therein and break out of the same, shall be guilty of felony. P. S. fourteen years, or two years' imprisonment.

Section 57.—Whosoever shall break and enter any dwelling-house, church, chapel, meeting-house, or other place of Divine worship, or *any building within the curtilage*, schoolhouse, shop, warehouse, or counting-house, with intent to commit any felony therein, shall be guilty of felony P. S. seven years, or two years' imprisonment.

Section 58.—Whosoever shall be *found by night armed* with any dangerous or offensive weapon or instrument whatsoever with intent to break or enter into any dwelling-house or other building whatsoever and to commit any felony therein, or shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any padlock, key, crow, jack, bit, or other implement of housebreaking, or shall be found by night having his face blackened or otherwise disguised with intent to commit any felony, or shall be found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein, *shall be guilty of a misdemeanor*. P. S. five years, or two years' imprisonment.

Section 59.—Whosoever shall be convicted of any such misdemeanor as in the last preceding section mentioned, committed *after a previous*

conviction either for felony or misdemeanor, is liable to a punishment of ten years' penal servitude, or two years' imprisonment.

Larceny in Dwelling-house.

Section 60.—To steal in any dwelling-house any chattel, money, or valuable security, to the value in the whole of 5*l.*, is felony. P. S. fourteen years, or two years' imprisonment.

Section 61.—To steal any chattel, money, or valuable security in any dwelling-house, *putting any one therein in bodily fear* by any menace or threat, is felony. P. S. fourteen years, or two years' imprisonment.

Larceny in Manufactories.

Section 62.—To steal, to the value of 10*s.*, any woollen, linen, hempen, or cotton yarn, or any goods or article of silk, woollen, linen, cotton, alpaca, or mohair, or of any such materials mixed, etc., whilst laid, placed, or exposed, during any stage, process, or progress of manufacture, in any building, field, or other place, is felony. P. S. fourteen years, or two years' imprisonment.

Larceny in Ships, Wharves, etc.

Section 63.—To steal any goods or merchandise in any vessel, barge, or boat of any description, in any haven or port, or upon any navigable river or canal, or in any creek or basin belonging to or communicating therewith, or steal any goods or merchandise from any dock, wharf, or quay, adjacent to any such port, river, etc., is felony. P. S. fourteen years, or two years' imprisonment.

Section 64.—To plunder or steal any part of *any ship in distress, or wrecked*, or any goods, merchandise, or articles of any kind belonging to such ship, etc., is felony. P. S. fourteen years, or two years' imprisonment.

The offender may be indicted and tried either in the county or place in which the offence shall have been committed or in any county or place next adjoining.

Section 65.—*Shipwrecked goods*, etc., found in possession of any person not satisfactorily accounting for same shall on order of justice be delivered over to rightful owner, and the offender on conviction is liable to imprisonment for six months, or shall forfeit and pay 20*l.* over and above value of goods.

Section 66.—If any person shall *offer for sale shipwrecked goods*, etc., unlawfully taken, etc., in every such case the person to whom such goods, etc., are offered, or any officer of customs or any peace officer may seize the same. The goods, if unlawfully come by, may by order of justice be delivered over to rightful owner upon payment of reward to persons who seized the same.

If the person offering the goods shall not satisfactorily account for the possession of them, he may be imprisoned for any term not exceeding six months, or he may be required to forfeit and pay any sum not exceeding 20*l.* over and above the value of the goods.

Larceny or Embezzlement by Clerks, Servants, etc.

Section 67.—Whosoever, *being a clerk or servant*, or being employed for the purpose or in the capacity of a clerk or servant, shall steal any

chattel, money, or valuable security belonging to or in the possession or power of his master or employer, shall be guilty of felony. P. S. fourteen years, or two years' imprisonment. Males may be whipped.

Section 68.—**Embezzlement.**—Whosoever, *being a clerk or servant*, or being employed for the purpose or in the capacity of a clerk or servant, shall *fraudulently embezzle* any chattel, money, or valuable security, which shall be delivered to or received or taken into possession by him *for or in the name or on the account of his master or employer*, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money, or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed. P. S. fourteen years, or two years' imprisonment. Males may be whipped.

Section 69.—Any person employed *in the Queen's service or in the police* who shall steal any chattel, money, or valuable security belonging to or in the possession or power of Her Majesty, or entrusted to or received or taken into possession by him by virtue of his employment, shall be guilty of felony. P. S. fourteen years, or two years' imprisonment.

Section 70.—Any person who is employed *in the Queen's service or in the police*, and who being entrusted by virtue of such employment with the receipt, custody, management, or control of any chattel, money, or valuable security, *shall embezzle* or in any manner fraudulently apply or dispose of the same or any part thereof to his own use or benefit, or for any purpose whatsoever except for the public service, shall be deemed to have feloniously stolen the same from Her Majesty. P. S. fourteen years, or two years' imprisonment.

Offender may be tried and punished in any county or place where apprehended or in custody, and it shall be lawful to lay the property of any such chattel, money, etc., in Her Majesty.

Section 71.—It shall be lawful to charge in the indictment and proceed against the offender for *any number of distinct acts of embezzlement*, or of fraudulent application or disposition, *not exceeding three*, which may have been committed by him against Her Majesty, or against the same master or employer, within the space of six months from the first to the last of such acts; and in every such indictment where the offence shall relate to any money or any valuable security, it shall be sufficient to allege the embezzlement, or fraudulent application or disposition, to be of money, without specifying any particular coin or valuable security.

Section 72.—**Larceny or embezzlement.**—If upon the trial of any person indicted for embezzlement or fraudulent application or disposition as aforesaid, *the offence shall be proved to amount in law to larceny*, he shall not by reason thereof be entitled to be acquitted, but the jury may return as their verdict that such person is not guilty of embezzlement, etc., but is guilty of simple larceny, or of larceny as a clerk, servant, etc., and such person shall be liable to be punished as for such larceny; and if upon the trial of any person indicted for larceny it *shall be proved that he took the property in question in any such manner as to amount in law to embezzlement*, he shall not by reason thereof be entitled to be acquitted, but the jury may return as their verdict that such person is *not guilty of larceny, but is guilty of embezzlement* or fraudulent application, etc., as the case may be, and thereupon such person shall be liable to be punished as for such embezzlement, fraudulent application or disposition; and no

person so tried for embezzlement, etc., or larceny as aforesaid, shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts.

Section 73.—*Any officer or servant of the Bank of England, or of Ireland*, entrusted with any bond, deed, note, bill, warrant, or money, or with any security, money, etc., belonging to the said governor and company, or belonging to some other person or body politic or corporate, and lodged or deposited with the same, who shall secrete, embezzle, or run away with any such bond, bill, etc., shall be guilty of felony. P. S. for life, or two years' imprisonment.

Larceny by Tenants or Lodgers.

Section 74.—Any one stealing any chattel or fixture let to be used by them in or with any house or lodging, whether the contract be entered into by the lodger or tenant, or by the husband, or by any person on their behalf, is guilty of felony. Punishment, two years' imprisonment; males may be whipped. Where value of articles exceeds 5*l*.—punishment, P. S. seven years, or two years' imprisonment; males may be whipped.

Frauds by Agents, Bankers, and Factors.

Sections 75 to 79 deal with frauds by agents.

Section 80.—Whosoever being a trustee of any property shall convert or appropriate the same to his own use, or use of any other person, etc., shall be guilty of a misdemeanor. P. S. seven years, or two years' imprisonment. No prosecution is to be commenced without sanction of Attorney-General. See also ss. 85, 86, and 87.

Frauds by Directors.

Sections 81 to 84 relate to embezzlement and frauds by directors and officers of public companies and corporate bodies.

Section 81.—Fraudulent appropriation of property by a director or officer of public company is a misdemeanor, as is also the keeping of fraudulent accounts (s. 82), or the wilful destruction of or falsifying of books, etc. (s. 83).

Section 84.—It is a misdemeanor for a director or public officer of any company to make, circulate or publish, any fraudulent statement of accounts, etc.

The misdemeanors mentioned in ss. 81 to 84 are punishable by seven years' penal servitude, or two years' imprisonment.

Sections 85, 86, 87, relate to procedure, trial, etc.

False Pretences.

Section 88.—Whosoever shall by any false pretence obtain from any other person any chattel, money, or valuable security with intent to defraud shall be guilty of a misdemeanor. P. S. five years, or two years' imprisonment. If upon an indictment for false pretences it is proved that the defendant obtained the property in such manner as to amount in law to larceny, he is not on that account to be acquitted. A person tried for the misdemeanor is not liable to prosecution for larceny on same facts. It is sufficient to allege an intent to defraud generally, without proving an intent to defraud any particular person.

Section 89.—Whosoever shall by any false pretence cause or procure any money, etc., to be paid or delivered to any other person for the use or benefit of the person making such false pretences, or of any other person, shall be deemed to have obtained such money, etc., within the meaning of the last preceding section.

Under s. 90 it is a misdemeanor to cause or induce by fraud any person to execute deeds, etc.

Receiving Stolen Goods.

Section 91.—Whosoever shall receive any chattel, money, or other property, the stealing, taking, or otherwise disposing whereof shall amount to a felony, knowing the same to have been feloniously stolen, taken, etc., shall be guilty of felony.

The receiver may be convicted as an accessory after the fact, or for a substantive felony. A receiver shall be liable to fourteen years' penal servitude, or two years' imprisonment: males under sixteen may be whipped.

Section 92.—In an indictment for stealing it is lawful to add a count for receiving the same, and conversely in an indictment for receiving it is lawful to add a count for feloniously stealing. It is for the jury to say of which offence they find the prisoner guilty.

Section 93.—Any number of receivers may be charged with substantive felonies (*i.e.*, of receiving) in the same indictment, and tried together.

Section 94.—Upon a trial for jointly receiving, the jury may convict one or more of separately receiving.

Section 95.—When the principal offence is a misdemeanor the receiver is also guilty of a misdemeanor; punishable by seven years' penal servitude or two years' imprisonment. Males under sixteen may be whipped.

Section 96.—A receiver may be tried in any county or place in which he shall have or shall have had the property which is the subject of the charge in possession, or in any county or place in which the party guilty of the principal felony or misdemeanor may by law be tried.

Section 97.—Where the principal offence is punishable on summary conviction, the receiver is liable on summary conviction to the same punishment to which the principal is liable.

Section 98 of Act deals with punishment of principals in the second degree, and accessories and abettors.

By s. 99 abettors are punishable on summary conviction.

Restitution and Recovery of Property.

Section 100.—If any person guilty of any felony or misdemeanor in stealing, taking, or disposing of or in knowingly receiving any chattel, money, or other property, is indicted for such offence, and convicted thereof, in such case the property is to be restored to the owner or his representatives. The court may order the restitution in a summary manner. But no such restitution is made if it appears that any valuable security has been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument has been *bonâ fide* taken or received by transfer or delivery by some person or body corporate for a just and valuable consideration, without any notice or reasonable

cause to suspect that the same had by any felony or misdemeanor been stolen, etc.

Section 101.—**Rewards.**—To corruptly take any reward for helping a person to property stolen or obtained, etc., by any felony or misdemeanor (unless all due diligence to bring the offender to trial has been used) is a felony. P. S. seven years, or two years' imprisonment. Males may be whipped.

Section 102.—An advertisement offering a reward for the return of stolen or lost property, *using words purporting that no questions will be asked* or seizure or inquiry made after the person producing the property, renders the advertiser, printer, and publisher liable to a forfeit of 50*l.* each.

Apprehension of Offenders, etc.

Section 103.—Any person found committing any offence punishable by by virtue of this Act (except offence of angling in daytime), may be apprehended without a warrant by any person, and forthwith taken before some justice of the peace, to be dealt with according to law. Justices may grant warrants to search for supposed stolen property; and any person to whom any such property shall be offered to be sold, pawned, or delivered, is authorized to apprehend and forthwith take before a justice of the peace the party offering the same, together with such property, to be dealt with according to law.

Section 104.—Any constable or peace officer may take into custody without warrant any person whom he shall find lying or *loitering in any highway*, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony against this Act, and shall take such person as soon as reasonably may be before a justice of the peace, to be dealt with according to law.

Section 105.—A justice may, on oath of credible witness, issue summons to compel appearance of persons charged with offences, and in default of appearance may adjudicate on case, or issue warrant for apprehension of persons, or the justice may issue warrant (unless otherwise directed) without previous summons.

Section 106.—Every sum of money forfeited for amount of any injury done shall be assessed by the convicting justice and paid to the party aggrieved, except he be unknown, in which case it shall be applied as a penalty. Every sum imposed as a penalty shall be paid and applied in the same manner as other penalties recoverable before justices are to be applied.

Section 107.—Justices may commit for non-payment of penalties.

Section 108.—When any person shall be summarily convicted of any offence, and it shall be a first conviction, the justices may discharge the offender upon his making satisfaction to the party aggrieved.

Section 109.—In case any person convicted of any offence summarily shall have paid any penalty, or have suffered imprisonment, he shall be released from all other proceedings for the same cause.

Section 110.—**Appeal.**—Permission to appeal to quarter sessions is given in certain cases.

Section 111.—No conviction or adjudication made on appeal shall be quashed for want of form or be removed by *certiorari*.

Section 112.—Repealed as to England.

Section 113.—**Venue.**—All actions and prosecutions shall be laid and tried in the county where committed, and shall be commenced within six months after the fact committed. Notice in writing of such action, etc., to be given to the defendant *one month at least* before the commencement of the action.

The section contains further provisions regarding costs, etc.

As to other Matters.

Section 114.—Under s. 114, stealers of property in one part of the United Kingdom who have the same in any other part of the United Kingdom may be tried and punished in that part of the United Kingdom where they have the property (*i*).

Section 115.—All offences mentioned in this Act committed within the *jurisdiction of the Admiralty* shall be treated as if committed on land in England or Ireland, and may be tried and determined in any county or place in which the offender shall be apprehended or be in custody, and the offence shall be averred to have been committed "on the high seas"; but nothing contained in this section shall alter the laws relating to Her Majesty's land and naval forces.

Previous Convictions.

Section 116.—In any indictment for an offence punishable under this Act, and committed after a previous conviction for any felony, misdemeanor, or offence punishable on summary conviction, it shall be sufficient after charging such subsequent offence to state that the offender was at a certain time and place previously convicted for any such felony, misdemeanor, etc., without describing the previous offence. A certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony or misdemeanor, or a copy of the summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, and to which such summary conviction shall have been returned, or by the deputy of such officer (for which certificate a fee of 5*s.* shall be paid), shall upon proof of the identity of the offender be sufficient evidence of such conviction, without proof of the signature or official character of the person appearing to have signed the same. The proceedings upon an indictment for committing any offence after a previous conviction for any of the crimes above referred to shall be as follows:—The offender shall in the first instance be arraigned upon so much only of the indictment as charges the subsequent offence, and the jury shall be charged in the first instance to inquire concerning such subsequent offence only, and if they find him guilty, or if he plead guilty, he shall then, and not before, be asked whether he has been previously convicted, as alleged in the indictment. If he admits, the court may proceed to sentence him; but if he denies or will not answer, the jury are then, without being again sworn, charged to inquire concerning such previous conviction, the point to be

(*i*) Where the prisoner stole a watch at Liverpool and sent it by railway to a confederate in London, it was held that the constructive possession (which is equivalent to the actual possession) remained in the prisoner, and that he was lawfully tried and convicted at the Middlesex sessions. *R.* v. *Rogers*, 1 L. R. (C. C.) 136.

established being the identification of the accused with the person so convicted. The only case in which evidence of a previous conviction may be given before the subsequent conviction is found, is when the prisoner gives evidence of character. In this case the jury are to inquire of the previous conviction and of the subsequent offence at the same time.

Section 117.—**Sureties.**—Whenever any person shall be convicted of any indictable misdemeanor punishable under this Act, the court may fine the offender and require him to find sureties for keeping the peace, etc.; and in case of any felony the court may require the offender to enter into recognizances and find sureties, in addition to any punishment authorized: Provided that no person shall be imprisoned for not finding sureties for any period exceeding one year.

Section 118.—"Hard labour" is to be undergone in the common gaol or house of correction.

Section 119.—Solitary confinement is not to exceed one month at any one time, nor three months in any one year.

Whenever whipping may be awarded the court may sentence the offender to be at once privately whipped, the number of strokes being specified.

Section 120.—Every offence punishable on summary conviction may be prosecuted in England under 11 & 12 Vict. c. 43, and in Ireland under 14 & 15 Vict. c. 93, etc.

Section 121.—The costs of the prosecution of misdemeanors against this Act may be allowed in the same manner as in cases of felony.

Section 122.—The Act does not extend to Scotland, except as expressly provided.

Section 123.—Commencement of Act, 1st November, 1861.

MALICIOUS DAMAGE ACT, 1861.

(24 & 25 VICT. C. 97.)

An Act to consolidate and amend the Law relating to Malicious Injuries to Property. [6th August, 1861.]

MALICIOUS INJURIES TO PROPERTY.

These offences are by this Act classed as follows:—

INJURIES BY FIRE.

It is Felony *unlawfully and maliciously* to set fire to any church, chapel or other place of divine worship (s. 1); to set fire to any dwelling-house, any person being therein (s. 2); to set fire to any house, stable, outhouse, warehouse, shop, barn, hovel, or fold, or to any farm building, or erection used in farming land, or in carrying on any trade or manufacture (although in possession of offender), with intent thereby to injure or defraud any person (s. 3); to set fire to any station, engine-house, warehouse, or other building belonging to any railway, port, dock, or harbour, or to any canal or other navigation (s. 4); to set fire to any building other than such as are in this Act before mentioned, belonging to the Queen, or to any county, borough, parish, or place, or college, or to any inn of court, or devoted to public use or maintained by public subscription (s. 5).

[*Punishment.*—The foregoing felonies are punishable by penal servitude for life or imprisonment for two years. Males under sixteen may be whipped.]

To unlawfully and maliciously set fire to any building (*k*) other than such as are in this Act mentioned is a felony (s. 6).

It is a felony to unlawfully and maliciously set fire to any matter or thing, being in, against, or under any building, under such circumstances that if the building were thereby set fire to, the offence would amount to felony (s. 7).

By s. 8.—The attempt to set fire to any building, or any matter or thing in the last preceding section mentioned, under such circumstances that if the same were thereby set fire to, the offender would be guilty of felony, is felony.

[*Punishment.*—The foregoing felonies are punishable by fourteen years' penal servitude or two years' imprisonment. Males under sixteen may be whipped.]

Injuries by Explosives.

To unlawfully and maliciously, by gunpowder or other explosive, destroy or damage any dwelling-house, any person being therein, or any building whereby life is endangered, is felony. Penal servitude for life, or imprisonment for two years. Males under sixteen may be whipped (s. 9).

Unlawfully and maliciously attempting to place in or near any building any gunpowder or other explosive substance, with intent to destroy or damage any building, or any engine, machinery, goods, etc., whether or not any explosion take place, is felony. P. S. fourteen years, or two years' imprisonment. Males under sixteen may be whipped (s. 10).

Injuries by Rioters, etc.

If any persons riotously and tumultuously assembled together shall unlawfully and with force demolish, or begin to demolish, any church, chapel, or place of Divine worship, or any house, stable, outhouse, warehouse, barn, hovel, or fold, or any building or erection used in farming land, or carrying on trade or manufacture, and any public buildings (as enumerated in s. 5), or any machinery, or any engine, bridge, truck, etc., connected with any mine, every such offender is guilty of felony. P. S. for life, or two years' imprisonment (s. 11).

If any persons riotously and tumultuously assembled together shall unlawfully and with force injure or damage any such church, building, or premises as in the last preceding section mentioned, every such offender shall be guilty of a *misdemeanor*. P. S. for seven years or imprisonment for two years. If indicted under the last preceding section, the defendant may be found guilty under this section (s. 12).

Injuries by Tenants.

Whosoever being possessed of any dwelling-house, or other building, held for any term of years or at will, or held over after the termination of

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(*k*) An unfinished dwelling-house of which the external and internal walls are built, and the roof covered in, and a considerable part of the flooring laid, and the walls and ceilings prepared for plastering, is a building within 24 & 25 Vict. c. 97, s. 6. *R.* v. *Manning*, 93 L. T. (N.S.) 573; 41 L. J. M. C. 214.

any tenancy, shall unlawfully and maliciously pull down or demolish, or begin to demolish, the same, or shall unlawfully and maliciously pull down or sever from the freehold any fixture being fixed in or to such dwelling-house or building, shall be guilty of a *misdemeanor* (s. 13).

Manufactures and Machinery.

To unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy, etc., any goods, or article of silk, woollen, linen, cotton, hair, mohair, or alpaca, or any such materials mixed with each other, etc., or any framework-knitted piece, stocking, hose, or lace, being in the loom or frame, or on any machine, rack, etc., or in any stage or process of manufacture, or to unlawfully and maliciously cut, break, or destroy or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, etc., or any such materials mixed with each other, or with any other material, or to unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or render useless, any loom, machine, tool, etc., employed in carding, spinning, weaving, or otherwise manufacturing or preparing any such goods or articles, or by force to enter into any house, building, or place, with intent to commit any of the offences in this section mentioned, is felony. P. S. for life, or two years' imprisonment. Males may be whipped (s. 14).

To unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any machine or engine (*l*) used for sowing, reaping, threshing, etc., or for performing any other agricultural operation, or any machine or engine, or any tool or implement, prepared for or employed in any manufacture whatever (except the manufactures referred to in preceding section), is felony. P. S. seven years, or two years' imprisonment. Males may be whipped (s. 15).

Corn, Trees, and Vegetable Productions.

Whosoever shall unlawfully and maliciously set fire *to any crop* of hay, grass, corn, grain, or pulse, or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, wheresoever the same may be growing, shall be guilty of felony. P. S. for fourteen years, or imprisonment for two years. Males may be whipped (s. 16).

To unlawfully and maliciously set fire *to any stacks* of corn, grain, hay, straw, or of any produce, or of furze, gorse, heath, wood, bark, or to any similar produce to that described in preceding section, is felony, and similarly punishable (s. 17).

It is a felony to unlawfully and maliciously attempt to set fire to any such matter or thing as in either of the last two preceding sections mentioned under such circumstances that if the same were thereby set fire to the offender would be, under either of such sections, guilty of felony. P. S. seven years, or two years' imprisonment. Males may be whipped (s. 18).

(*l*) A person who plugged up the feed-pipe of a steam engine and displaced other parts of the engine in such a way as to render it temporarily useless, and would have caused an explosion if the obstruction had not been discovered and removed, was held guilty of damaging the engine with intent to render it useless within the meaning of 24 & 25 Vict. c. 97, s. 15. *R.* v. *Fisher*, 35 L. J. 57.

Hopbinds.—To unlawfully and maliciously cut or otherwise destroy any hopbinds growing on poles in any plantation of hops is felony. P. S. fourteen years, or two years' imprisonment. Males may be whipped (s. 19).

Trees.—To unlawfully and maliciously cut, break, bark, or otherwise damage any tree, shrub, or underwood, growing in any park, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, where the injury done *exceeds the sum of* 1*l.* (*m*) is Felony. P. S. for five years, or two years' imprisonment. Males may be whipped (s. 20).

To unlawfully and maliciously cut, break, bark, or otherwise destroy any tree, shrub, or underwood *growing elsewhere than* in park, garden, orchard, or avenue, or ground adjoining to or belonging to any dwelling-house, where the injury done *exceeds the sum of* 5*l.* (*n*), is Felony. P. S. for five years, or two years' imprisonment. Males may be whipped (s. 21).

To unlawfully and maliciously cut, break, bark, root up, or otherwise damage the whole or any part of any tree, sapling, or shrub, or any underwood, *wheresoever the same may be growing*, the injury done being to the *amount of* 1*s. at the least*, is punishable, on *summary conviction*, by imprisonment for three months, or penalty not exceeding 5*l.* above amount of injury. The second offence is punishable by twelve months' imprisonment. *Any subsequent offence is a Misdemeanor*—punishment, two years' imprisonment. Males may be whipped (s. 22 ; see also s. 53).

Fruit or vegetables.—To unlawfully and maliciously destroy, or damage with intent to destroy, any plant, root, fruit, or vegetable production, *growing in any garden*, orchard, nursery ground, hothouse, or conservatory, is punishable, *on summary conviction*, by imprisonment for six months, or penalty not exceeding 20*l.* above amount of injury. The *second offence is a Felony*, punishable by five years' penal servitude. Males may be whipped (s. 23).

To unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and *growing in any land*, open or inclosed, *not being a garden, orchard, or nursery ground*, is punishable, *on summary conviction*, by imprisonment for one month or penalty of 20*s.* ; for the second offence, six months' imprisonment (s. 24).

[The section (24) omits the word "fruit." See s. 37 of Larceny Act, *ante*].

Injuries to Fences.

To unlawfully and maliciously cut, break throw down, or in anywise destroy any fence, or any wall, stile, or gate, or any part thereof respectively, is punishable, *on summary conviction*, by a penalty not exceeding 5*l.* above

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(*m*) Where the value of the articles stolen, or the injury done, shall exceed 5*l.*, the respective values of several trees, or of the damage done thereto, may be added to make up the 5*l.*, in case the trees were cut down or the damage done as part of one continuous offence. *R.* v. *Shepherd*, 17 L. T. (N.S.) 482 ; L. R. C. C. 118, and 32 J. P. 243.

(*n*) The damage done must be the amount of damage to the growing trees, and not consequential damages. *R.* v. *Whiteman*, 23 L. J. 126.

amount of injury. A second offence is punishable by twelve months imprisonment (s. 25).

[*If injury be done to a fence, and there be no evidence of malice, and a claim of right be set up on reasonable grounds, the justices will have no power to convict under the above section or section* 52 *post.* *R.* v. *Snape*, 27 J. P. 134].

Injuries to Mines.

To unlawfully and maliciously set fire to any mine of coal, cannel coal, anthracite, or other mineral fuel is felony. P. S. for life or two years' imprisonment. Males may be whipped (s. 26).

Under ss. 27, 28, 29 it is a felony to attempt to fire a mine, or to convey or run water into a mine with intent thereby to destroy it, or damage steam engines, straightways, tackle, etc., with intent to destroy or damage any mine.

Sea and River Banks, Works, etc.

To unlawfully and maliciously damage or destroy any sea bank or sea wall, or the bank or wall of any river, canal, reservoir, or marsh, whereby any land or building shall be in danger of being overflowed or damaged, or to break or otherwise destroy any quay, wharf, towing path, weir, watercourse, or other work belonging to any port, dock, or reservoir, or to any navigable river or canal, is felony (s. 30).

To unlawfully and maliciously cut off or remove any piles, chalk, or other materials used for securing any sea bank or sea wall, etc., or to open or draw up any floodgate or sluice, etc., with intent and so as thereby to obstruct or prevent the carrying on the navigation thereof, is felony (s. 31).

Injuries to Ponds.

To unlawfully and maliciously cut through, break down, or otherwise destroy the dam, floodgate, or sluice of any fish pond or private water, with intent thereby to take or destroy, or cause the loss or destruction of any of the fish, or to put any lime or other noxious material (*o*) in any such pond or water with intent to destroy any of the fish, or to cut through, break down, or otherwise destroy the dam or floodgate of any mill pond, reservoir, or pool, is a *Misdemeanor* (s. 32).

Bridges, Viaducts, and Toll Bars.

To unlawfully and maliciously thrown down or destroy any bridge, or any viaduct or aqueduct over or under which any highway, railway, or canal shall pass, or to do any injury so as to render the same dangerous or impassable, is felony (s. 33).

Similarly to throw down or otherwise to destroy any turnpike gate or toll-bar, is a *Misdemeanor* (s. 34).

Railway Carriages and Telegraphs.

To unlawfully and maliciously put anything upon or across any railway, or to displace any rail, sleeper, etc., or to interfere with the points or

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(*o*) Section 32 is amended by the Salmon Fisheries Act, 1873 (36 & 37 Vict. c. 71), s. 13. Placing poisonous substances in waters containing salmon, see under title "Fishery Acts," *ante*.

signals, or to do anything with intent to obstruct, upset, or injure any engine, tender, carriage, or truck using such railway is felony. P. S. for life, or two years' imprisonment. Males may be whipped (s. 35).

To obstruct, by any unlawful act, or by wilful omission or neglect, any engine or carriage using any railway is a Misdemeanor (s. 36).

To unlawfully and maliciously injure any electric or magnetic telegraph, is a misdemeanor. Offenders can be dealt with summarily. Fine of 10*l.* or three months' imprisonment (s. 37).

Attempting to commit any of the offences in last preceding section mentioned, renders offender liable to three months' imprisonment or fine of 10*l.* (s. 38).

Injuries to Works of Art.

To unlawfully and maliciously destroy or damage works of art in any museum, church, or public place is a Misdemeanor (s. 39).

Cattle and other Animals.

To unlawfully and maliciously kill, maim, or wound (*p*) any cattle is felony. Fourteen years' P. S. or two years imprisonment (s. 40).

[*The word "Cattle" under former statutes has been held to include horses, sheep, pigs, and asses, as well as oxen.*]

To unlawfully and maliciously kill, maim, or wound any dog, bird, beast, or other animal (*q*), not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose, is punishable *on summary conviction* by six months' imprisonment, or a penalty of 20*l.* over and above the amount of injury. Second offence twelve months (s. 41).

[*The section includes poultry, swans, pigeons, and such like birds which serve for the food of man and are the subject of larceny at common law; also such animals as parrots and ferrets, ordinarily kept in a state of confinement, and domestic animals, such as cats*].

Injuries to Ships.

To unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel is Felony. P. S. for life, or two years imprisonment (s. 42).

Setting fire to ship to prejudice owner or underwriter, is felony; as is also attempting to set fire to vessel (ss. 43 and 44).

It is felony to place any gunpowder near vessel with intent to destroy or damage the same (s. 45).

Damaging ships otherwise than by fire is felony (s. 46).

To unlawfully mark, alter, or remove any light or signal, or exhibit any false light or signal, with intent to bring any ship, vessel, or boat into

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(*p*) As to wounding with "manual" power, without instrument. See *R.* v. *Bullock*, 1 L. R. C. C. 115; 37 L. J. M. C. 47.

(*q*) Setting a rat trap in one's garden to trap cats or dogs wandering there is not unlawful. *Bryan* v. *Eaton*, 40 J. P. 213; Treat. 39 J. P. 402. But this would probably not apply to a case in which the animal was taken alive and afterwards killed. As to laying poisoned flesh, see title Poisons (General Subjects), p. 245.

danger, or to do anything tending to loss or destruction of same, and for which no punishment is hereinbefore provided, is Felony. P. S. for life, or two years' imprisonment. Males may be whipped (s. 47).

To unlawfully and maliciously cut away, cast adrift, remove, or alter, etc., any boat, buoy, or mark intended for guidance of seamen, or purpose of navigation, is felony (s. 48).

To unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, is felony (s. 49).

Sending Letters Threatening to Burn or Destroy.

To send, or utter, or cause to be received knowing the contents thereof, any letter or writing threatening to burn or destroy any house, barn or other building, or any rick or stack of grain, hay, straw, or other agricultural produce, or any such produce, in any building, or any ship or vessel, or to kill, maim, or wound any cattle, is Felony. P. S. ten years or two years' imprisonment. Males may be whipped (s. 50).

Injuries not before Provided for.

To unlawfully (*r*) and maliciously commit any damage, injury, or spoil to or upon any real or personal property of a public or private nature, *for which no punishment is hereinbefore provided*, the damage, injury, or spoil being to an amount exceeding 5*l*., is a *Misdemeanor*. Punishment, imprisonment for two years. Where the offence is committed at night, viz., between 9 P.M. and 6 A.M., the offender is liable to five years' penal servitude (s. 51).

Any person who wilfully or maliciously commits any damage, injury, or spoil to or upon any real or personal property of a public or private nature, for which no punishment is hereinbefore provided, is liable *on summary conviction* to imprisonment not exceeding two months, or fine not exceeding 5*l*., and also a further sum not exceeding 5*l*. as compensation (s. 52).

Proviso.—Section does not extend to any case where the party acted under a fair and reasonable supposition that he had a right (*s*) to do the thing complained of, nor to any trespass not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game.

The provisions in the last section shall extend to any person who shall wilfully or maliciously commit any injury to any tree, sapling, shrub, or underwood, for which no punishment is hereinbefore provided (*s.* 53).

Making Gunpowder to Commit Offences, etc.

To make or manufacture, or knowingly have in possession any gunpowder or explosive substance, or any machine or thing, with intent to commit any of the felonies in this Act mentioned, in a Misdemeanor (s. 54).

Search warrant.—Any justice may issue warrant upon reasonable cause, assigned on oath by any person *to search in the daytime* any house, mill, shop, or any cart, ship, etc., in which any engine, gunpowder, or explosive substance is suspected to be made or kept. See also 23 & 24 Vict. c. 139, as to powers under warrant (s. 55).

(*r*) To support a conviction under s. 51 of 24 & 25 Vict. c. 97, there must be a wilful and intentive doing of an unlawful act in relation to the property damaged. *R.* v. *Pembleton*, 43 L. J. 91; 38 J. P. 454.

(*s*) As to "Claim of right," see under title Trespass (General Subjects).

Other Matters.

Section 56 deals with punishment of accessories and abettors.

Persons loitering.—Any constable or peace officer may take into custody, without warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony against the Act, and shall take such person as soon as reasonably may be before a justice of the peace, to be dealt with according to law (s. 57).

Malice.—Every punishment and forfeiture by the Act imposed on any person maliciously (*t*) committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise (s. 58).

Every provision of the Act not hereinbefore so applied shall apply to every person who, with intent to injure or defraud any other person, shall do any of the acts hereinbefore made penal, *although the offender shall be in possession of the property against or in respect of which such act shall be done* (s. 59).

The intent to injure or defraud any particular person need not be stated in the indictment (s. 60).

Arrest.—*Any person found committing* any offence against the Act, whether the same be punishable upon indictment or upon summary conviction, *may be immediately apprehended*, without a warrant, by any peace officer, or the owner of the property injured, or his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law (s. 61).

Section 62 relates to issue of summons and warrant.

Section 63.—As to degrees of guilt in case of abettors.

Section 64.—As to application of penalties, etc.

In cases of summary conviction under this Act, where the sum forfeited or imposed as a penalty shall not be paid, the convicting justice (unless where otherwise specially directed) may commit the offender to be imprisoned (s. 65).

First conviction.—Where any person shall be summarily convicted of any offence against the Act, and it shall be a *first conviction*, *the justice may discharge the offender* from his conviction upon his making satisfaction to the party aggrieved (s. 66).

Summary conviction is a bar, etc., to further proceedings (s. 67).

Section 68.—As to appeal.

Section 69.—As to *certiorari*, etc.

Justices shall transmit convictions for offences under Act to the next court of general or quarter sessions to be kept among the records of the court (s. 70 (*u*).

Venue and notice.—All actions and prosecutions shall be laid and tried in the county where the fact was committed within six months after fact

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(*t*) As to "Malice," see dictum of Blackburn, L.J. *R.* v. *Martin*, L. R. 8 Q. B. D. 54; 46 J. P. 228.

(*u*) This section is repealed as to England (47 & 48 Vict. c. 43, s. 4).

committed; notice in writing to be given defendant one month before commencement of action (s. 71).

All offences committed *within the jurisdiction of the Admiralty* shall be treated as if committed on land in England or Ireland, and may be tried and determined where offender shall be apprehended or be in custody, and the offence shall be averred to have been committed "on the high seas," the laws relating to Her Majesty's land or naval forces to remain unaltered (s. 72).

Section 73.—As to fine, sureties, etc.

Section 74 describes hard labour.

"Solitary confinement" is not to exceed one month at any one time, nor three months in any one year. Whenever "whipping" may be awarded, the court may sentence the offender to be once privately whipped, the number of strokes and instrument being specified (s. 75).

Sections 76 to 79.—As to procedure, costs, etc.

FORGERY ACT, 1861.

(24 & 25 Vict. c. 98).

An Act to consolidate and amend the Law relating to Indictable Offences by Forgery. [6th August, 1861.]

Forging Her Majesty's Seals.

To forge or counterfeit, or utter, etc., the Great Seal of the United Kingdom, the Queen's Privy Seal, Her Royal Sign Manual, etc., and documents to which any of these are attached, is Felony. P. S. for life, or imprisonment for two years (s. 1).

Forging Transfers of Stock, etc.

To forge or alter, or knowingly utter any transfer or interest in any stock, annuity, or public fund, or in the capital stock of any body corporate, established by Act or charter, or to forge or alter, or to utter, etc., any power of attorney or other authority relating to such stock, etc., with intent to defraud is Felony (s. 2), as is also s. 3 for personating owner of stock, etc.

Forging attestation to power of attorney, etc., is Felony (s. 4).

Making false entries in book of public funds is Felony (s. 5).

Any clerk, servant, or other person employed or entrusted by the governor and company of the Bank of England making out false warrants shall be guilty of Felony (s. 6).

Forging India Bonds.

To forge or alter, or knowingly utter any East India bond, or security relating to the East Indies, or endorsement or assignment thereof with intent to defraud, is Felony. P. S. for life, or imprisonment for two years (s. 7).

Forging Exchequer Bills, etc.

To forge or alter, or knowingly utter any Exchequer bill, or endorsement or assignment thereof, or receipt, etc., for interest thereon, with intent to defraud, is Felony. P. S. for life, or two years' imprisonment (s. 8).

Making or knowingly having any plates, dies, seals, etc., in imitation of those used for manufacturing Exchequer bills, etc., is a Felony (s. 9).

Making or having paper in imitation of that used for such bills, etc., is Felony (s. 10 also s. 11).

[*These sections are extended by* 40 & 41 *Vict. c.* 2, *s.* 10.]

Forging Bank Notes.

To forge or alter, or to knowingly utter, any note or bill of exchange of the Bank of England or Ireland, or of any company carrying on the business of bankers, commonly called a bank note, or bill or any endorsement or assignment thereof, with intent to defraud, is Felony. P. S. for life, or two years imprisonment (s. 12).

To purchase, receive, or knowingly have in possession any forged bank notes, or bank bills, is Felony (s. 13).

Sections 14 to 19 deal with offences of making or engraving, without lawful authority or excuse, plates for bank notes, etc.

Sections 20 to 24 deal with forgery of deeds, wills, bills of exchange, etc. (*x*).

Cheques.—Whenever any cheque or draft on any banker *shall be crossed* with the name of a banker, or with two transverse lines with the words "and company," or any abbreviation thereof, whosoever shall obliterate or alter any such crossing, or shall utter any cheque or draft so altered, knowing the same to have been altered with intent to defraud, shall be guilty of Felony. P. S. for life or two years imprisonment (s. 25) (*y*).

Sections 26 to 31 relate to various forgeries—debentures, records, court rolls, register of deeds, order of justices, recognizances, name of Accountant General, etc.

Forging Marriage Licences.

To forge or fraudulently alter or to knowingly utter any licence of or certificate for marriage, is Felony. P. S. seven years or two years' imprisonment (s. 35).

Forging Registers of Births, Deaths, etc.

Whosoever shall unlawfully destroy, deface, or injure any authorized register of births, baptisms, marriages, deaths, or burials, or shall forge or fraudulently alter in any such register any entries relating thereto, or insert in any such register any false entry, or shall give any false certificate, etc., or extract therefrom or forge the seal of any such register, shall be guilty of Felony. P. S. for life or imprisonment for two years (s. 36).

To knowingly and wilfully insert in any copy of any register transmitted to any registrar or other officer any false entry of any matter or to unlawfully destroy, deface, or injure, or conceal, any such copy of any register, is Felony. P. S. for life or imprisonment for two years (s. 37).

Demanding Property upon Forged Instruments.

Whoever, with intent to defraud, shall demand, obtain, or have delivered to any person, any chattel, money, or other property, by virtue of any

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(*x*) If a person gives a cheque entirely as his own to obtain goods, the credit being given wholly to himself without relation to any third person, the subscribing of it by a fictitious name does not amount to forgery. *R. v. Martin*, L. R. 5 Q. B. D. 34; 49 L. J. 13; 44 J. P. 74. The offence is obtaining the goods by false pretences.

(*y*) This section is extended by 46 & 47 Vict. c. 55, s. 17.

forged instrument, knowing the same to be forged, is Felony. Fourteen years P. S. or two years' imprisonment (s. 38).

As to other Matters.

To forge or utter any instrument, however designated, which shall be in law a will, testament, codicil, or testamentary writing, or a deed, bond, or writing obligatory, or a bill of exchange or promissory note, etc., renders the person so doing liable to be indicted as an offender against this Act, and punishable accordingly (s. 39).

As to forging in England documents made out of England (s. 40).

Offenders may be tried in the county where they are apprehended or are in custody (s. 41).

In any indictment for forging, altering, offering, uttering, disposing, or putting off any instrument, such instrument may be described by any name or designation by which the same is usually known, without setting out any copy or facsimile thereof (s. 42).

Similarly as to description of instrument—engraving (s. 43).

Intent.—In indictments for forging, altering, uttering, offering, disposing of, or putting off any instrument whatsoever, it shall not be necessary to allege an intent to defraud any particular person; it shall be sufficient to prove generally an intent to defraud (s. 44).

Criminal possession.—Custody or possession for purposes of Act includes not only *personal* custody or possession, but knowingly having the matter in the custody or possession of any other person, or in any dwelling-house, lodging, apartment, field, or other place (s. 45).

Search warrant.—A justice of the peace may, on information on oath, grant warrant to search for forged instrument (s. 46).

Sections 47 to 56 deal with jurisdiction, punishment of accessories, costs, etc.

COINAGE OFFENCES ACT, 1861.

(24 & 25 Vict. c. 99.)

An Act to consolidate and amend the Law against Offences relating to the Coinage. [6th August, 1861.]

Coinage Offences.

Section 1 defines the expressions "the Queen's current gold and silver coin," "the Queen's copper coin," "the Queen's current coin," etc. . . . The expression "false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin," includes any of the current coin which shall have been gilt, silvered, washed, coloured, or cased over, or in any manner altered, so as to resemble or be apparently intended to resemble or pass for any of the Queen's current coin of a higher denomination. . . . . Where the having any matter in the custody or possession of any person is mentioned in this Act, it shall include, not only the having of it by himself, in his personal custody or possession, but also the knowingly and wilfully having it in the actual custody or possession of any other person, and also the having it in any dwelling-house, building, lodging, apartment, field, or other place, whether belonging to or occupied by himself or not.

To falsely make or counterfeit any coin (*z*) resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, is in England and Ireland Felony (*a*). P. S. for life or imprisonment for two years (s. 2).

Colouring.—Colouring, washing, etc., counterfeit coin or any piece of metal, with intent to make it pass for gold or silver coin, or colouring, filing, or otherwise altering genuine coin with intent to make it pass for coin of a higher degree, is Felony (s. 3.)

Impairing.—To impair, diminish, or lighten any of the Queen's gold or silver coin, with intent that it shall pass for gold or silver coin, is Felony. Fourteen years' penal servitude or two years' imprisonment (s. 4).

Filings.—Unlawfully and knowingly having in possession any filings or clippings, dust, etc., produced by diminishing any of the Queen's gold or silver coin, is Felony (s. 5).

Dealing in.—Whosoever, without lawful authority or excuse (proof lies on accused), shall buy, sell, pay, or put off, any false or counterfeit coin resembling the Queen's gold or silver coin, for a lower value than the same imports, shall be guilty of Felony. P. S. for life or imprisonment for two years (s. 6).

Importing.—Whosoever, knowingly and without lawful authority or excuse (proof lies on accused), shall import or receive into the United Kingdom any counterfeit coin resembling, etc., the Queen's gold or silver coin, shall be guilty of Felony. P. S. for life or imprisonment for two years (s. 7). The *exporting* of false or counterfeit coin is a Misdemeanor (s. 8).

Uttering.—To knowingly utter or put off any counterfeit coin resembling the Queen's gold or silver coin, is a Misdemeanor. Punishment, imprisonment for one year (s. 9).

Whosoever shall tender, utter (*b*), or put off any counterfeit coin resembling the Queen's gold or silver coin, knowing the same to be false or counterfeit, *and shall, at the time of such tendering, have in his possession any other piece of false or counterfeit coin* resembling any of the Queen's gold or silver coin, or shall, within the space of ten days knowingly tender, utter, or put off any other false or counterfeit coin, shall be guilty of a Misdemeanor. Punishment, imprisonment for two years (s. 10).

Whosoever knowingly shall have in his possession *three or more pieces* of false or counterfeit coin resembling any of the Queen's gold or silver coin, and with intent to utter or put them off, shall be guilty of a

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(*z*) Genuine coins fraudulently filed at the edges by which weight is considerably reduced are counterfeit: *R.* v. *Herman*, 48 L. J. 106; 43 J. P. 398.

(*a*) All crimes which under this Act are felonies in England and Ireland are in Scotland high crimes and offences; misdemeanors in England and Ireland are high crimes and offences in Scotland.

(*b*) Evidence of subsequent uttering is admissible to prove guilty knowledge. *R.* v. *Foster*, 24 L. J. 134. Where coins were found in a prisoner's pocket separately wrapped up, it was held evidence of guilty knowledge. *R.* v. *Jarvis*, 25 L. J. 30.

Misdemeanor. Punishment, penal servitude for five years, or two years imprisonment (s. 11).

Second offence felony.—Anyone who *after a previous conviction* for any such misdemeanors as are mentioned in the last three preceding sections (9, 10, 11) of this Act, shall afterwards commit any of the misdemeanors in any of such sections mentioned, shall be guilty of *Felony*. Punishment, penal servitude for life, or two years' imprisonment (s. 12).

Uttering with intent to defraud any spurious coin, *e.g.*, foreign coin, medals, pieces of metal, etc., as current gold and silver coin, such coin, medals, etc., being of less value than the current coin, is a Misdemeanor. Punishment, one year's imprisonment (s. 13).

Copper coin. Whosoever shall falsely make or counterfeit any coin resembling any of the Queen's current *copper coin*; and whosoever, without lawful authority or excuse (proof lies on accused), shall knowingly make, buy, sell, or have in possession, any coining instrument or apparatus intended to make any copper coin; or shall buy, sell, put off, etc., any counterfeit coin resembling the Queen's copper coin, at a lower rate than the same imports, shall be guilty of Felony. P. S. for life or two years' imprisonment (s. 14).

Whosoever shall knowingly utter, etc., any false or counterfeit coin resembling any of the Queen's current copper coin, or shall have in his possession *three or more pieces of counterfeit coin* resembling any of the Queen's current copper coin, with intent to utter or put off the same, shall be guilty of a Misdemeanor. Punishment, imprisonment for one year (s. 15).

Defacing.—To deface the Queen's gold, silver, or copper coin *by stamping any names or words thereon*, although the coin be not thereby lightened, is a Misdemeanor. Punishment, imprisonment for one year (s. 16).

Any gold, silver, or copper *coin defaced* as in the last preceding section mentioned *is not a legal tender*; any person who tenders or puts off coin so defaced is liable on conviction before two justices to fine of 40*s.* (Attorney-General permitting) (s. 17).

Foreign coin.—To make or counterfeit any Foreign coin not being the Queen's current gold or silver coin, but resembling any gold or silver coin of any foreign prince, state or country, is Felony. P. S. for seven years or imprisonment for two years (s. 18).

Whosoever, without lawful authority or excuse (proof lies on accused), shall knowingly import or receive any such false or counterfeit coin as mentioned in the last section, shall be guilty of Felony. P. S. for seven years or two years' imprisonment (s. 19).

To knowingly tender or utter a counterfeit coin meant to resemble a foreign gold or silver coin, is a Misdemeanor, punishable by imprisonment for six months for a first offence (s. 20).

A second conviction for a like offence as in the last preceding section mentioned renders the offender liable to two years' imprisonment; *a third offence is Felony*—punishment, P. S. for life, or two years' imprisonment (s. 21).

Whosoever shall falsely make or counterfeit any kind of coin not being the Queen's current coin, resembling, etc., any copper coin, or any other coin made of any metal of less value than the silver coin of any foreign prince, shall be guilty of a Misdemeanor. Punishment, imprisonment for one year, and for second offence, P. S. for seven years or two years' imprisonment (s. 22)

To have in possession without lawful authority or excuse, any greater number of pieces *than five pieces* of false or counterfeit foreign coin, or copper or other coin as in last section mentioned, renders possessor liable to a penalty of 40*s*., or 10*s*. for every such piece so found in his possession, one moiety to informer, the other to poor of parish. Coins to be destroyed by order of justice (s. 23).

Knowingly and without lawful authority or excuse (proof lies on party accused) to make, buy, sell, or have in possession, any puncheon, matrix, stamp, die, or mould, impressed with figure, stamp, etc., of Queen's current gold or silver coin, or coin of foreign prince, state, etc. ; or to make, mend, buy, sell, or knowingly have in possession any edger, instrument, or engine for marking coin round edges ; or to make, mend, buy, sell, or knowingly have in possession any press for coinage, or any cutting engine, or other machine intended to be used for the false making or counterfeiting of coin, is Felony. P. S. for life or imprisonment for two years (s. 24).

To knowingly convey out of any of Her Majesty's Mints without lawful authority or excuse (proof whereof lies on party accused) any puncheon, matrix, stamp, die, mould, edger, instrument, or engine used in coining, or any useful part of same, or any coin, bullion, or metal, is Felony. P. S. for life or imprisonment for two years (s. 25).

Cutting coin.—In any case where suspected coin is tendered, it *may be cut, bent, etc.*, by any person to whom it is tendered, and if the coin be found to be counterfeit or unreasonably diminished, the loss shall fall upon the person tendering the same, but if the same shall be of due weight, and shall appear to be lawful coin, the person cutting, bending, or defacing the same is required to receive the same at the rate it was coined for ; any dispute to be determined by a justice of the peace. The tellers of the Exchequer and the Receivers-General are required to destroy counterfeit coin tendered in payment of revenue (s. 26).

If any person shall find or discover in any place whatever, any false or counterfeit coin resembling the Queen's gold, silver, or copper coin, or coin of foreign prince or state, or any instrument intended for counterfeiting of coin, or any filings, bullion, or gold or silver in dust, solution, etc., obtained by diminishing or lightening any of the Queen's current coin, the person so finding or discovering is empowered to seize the same , and where it shall be proved on the oath of a credible witness that there is cause to suspect that any person has been concerned in counterfeiting coin, or has in possession any counterfeit coin, or any instrument, tool, engine, etc., as aforesaid, or any filings, or bullion, or dust, a warrant may issue to search either by day or night, and if any such coin, or article as aforesaid be found, the same may be seized and produced in evidence (s. 27).

Venue.—Where any person shall utter counterfeit coin in one county or jurisdiction, *and within ten days* shall commit a like offence in any other county or jurisdiction, or where two or more persons acting in concert in different counties or jurisdictions shall commit any offence against this Act, every such offender may be indicted and punished in any one of the said counties or jurisdictions (s. 28).

Proof.—Upon trial of any person, proof that any coin is false or counterfeit need not necessarily be made by any moneyer or other officer of Her Majesty's Mint, but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any other credible witness (s. 29).

Every offence connected with falsely making or counterfeiting coin shall be deemed to be complete, although the coin shall not be in a fit

state to be uttered, or the counterfeiting thereof be finished or perfected (s. 30).

Arrest.—It shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence against the Act, and to convey or deliver him to a constable, or officer of police, to be dealt with according to law (s. 31).

No conviction shall be quashed for want of form, or be removed by *certiorari* into any of Her Majesty's superior courts of record; [and (*c*) no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a valid conviction to sustain the same] (s. 32).

Trial.—All actions and prosecutions shall be laid and tried in the county where the fact was committed, and be commenced within six months after fact committed. Notice in writing of such action shall be given to the defendant one month at least before commencement of action (*d*). In any such action the defendant may plead the general issue. No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court (s. 33).

Sections 34 to 36 relate to trial in Scotland, accessories, jurisdiction of Admiralty, etc.

Previous convictions.—In any indictment after a previous conviction for offence against Act (or Act relating to coin), it shall be sufficient after charging such subsequent offence to state the substance and effect of the conviction for the previous offence, and the production of a certificate of the conviction for the previous offence, signed by the clerk of the court or officer having custody of records (fee 6*s.* 8*d.*), shall, upon proof of the identity of the offender, be sufficient evidence of such conviction without proof of signature. The proceedings shall be as follows: The offender shall in the first instance be arraigned upon so much only of the indictment as charges the subsequent offence, and the jury shall be charged to inquire concerning such subsequent offence only, and if they find him guilty, or if he pleads guilty, he shall then and not before be asked whether he had been previously convicted; if he admits, the court may proceed to sentence him, but if he denies, the jury are then charged to inquire concerning such previous conviction, the point to be established being the identification of the accused with the person so convicted. The only case in which evidence of a previous conviction may be given *before the subsequent conviction is found* is where the prisoner gives evidence of character. In this case the jury are to inquire of the previous conviction and of the subsequent offence at the same time (s. 37).

Sections 38 to 43 relate to Fines and Sureties, Procedure and Costs.

(*c*) Section 32 from the words "and no warrant," is repealed as to England (47 & 48 Vict. c. 43, s. 4).

(*d*) A person who gives another into custody on a charge of uttering counterfeit coin will be entitled under 24 & 25 Vict. c. 99, ss. 31, 33, to notice of action if he honestly intended to put the law in force, and really believed that the person charged had committed an offence, although there was no reasonable cause for such belief. *Herman* v. *Seneschall*, 32 L. J. C. P. 43.

OFFENCES AGAINST THE PERSON ACT, 1861.

(24 & 25 Vict. c. 100.)

An Act to consolidate and amend the Law relating to Offences against the Person. [6th August, 1861.]

Murder.

Section 1.—Whosoever shall be convicted of Murder shall suffer death as a felon.

Section 2.—Upon every conviction for Murder the court shall pronounce sentence of death, and the same may be executed, and all other proceedings had and taken in the same manner as before the passing of this Act.

Section 3.—The body of every person executed for murder shall be buried within the precincts of the prison in which last confined after conviction, and the sentence of the court shall so direct.

Section 4.—All persons who shall conspire, confederate, and agree to murder any one, and whosoever shall solicit, encourage, or propose to any person, to murder any one, shall be guilty of a Misdemeanor. P. S. for ten years, or two years' imprisonment.

Manslaughter.

Section 5.—Whosoever shall be convicted of Manslaughter shall be liable to penal servitude for life, or two years' imprisonment, as the court shall award.

Section 6.—In any indictment for Murder or Manslaughter, or for being an accessory thereto, it shall not be necessary to set forth manner or means by which death was caused, but it shall be sufficient to charge that the defendant did feloniously, wilfully, and of his malice aforethought kill and murder the deceased; or in Manslaughter that the defendant did feloniously kill and slay the deceased. The section contains a provision *re* accessories.

Homicide, Etc.

Section 7.—No punishment shall be incurred by any person who shall kill another by misfortune or in his own defence, or in any other manner without felony.

Section 8.—Every offence which before the commencement of the Act 9 Geo. 4, c. 31, would have amounted to *petit treason*, shall be deemed to be murder only, and no greater offence; and persons guilty thereof may be tried and punished as in murder.

Section 9.—Venue *re* crimes committed *outside* kingdom.

Section 10.—Provision for the trial of murder and manslaughter where the death or cause of death only happens in England or Ireland.

Attempts to Murder.

Section 11.—To administer to or cause to be taken by any person any poison or other destructive thing, or by any means whatsoever to wound or cause any grievous bodily harm to any person, with intent in any of the cases aforesaid to commit murder, is Felony. P. S. for life or two years' imprisonment.

Section 12.—To destroy or damage any building by the explosion of gunpowder or other explosive substance *with intent to commit murder*, is Felony. P. S. for life, or imprisonment for two years.

Section 13.—To set fire to any ship or vessel, or any part thereof, or any goods or chattels therein, or to cast away or destroy any ship or vessel

with intent to commit murder, is Felony. P. S. for life or two years' imprisonment.

Section 14.—To attempt to administer to or cause to be taken by any person any poison or other destructive thing, or to shoot at any person, or by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, or attempt to drown, suffocate, or strangle any person, with intent, in any of such cases, to commit murder, is Felony, whether any bodily injury be effected or not. P. S. for life, or imprisonment for two years.

Section 15.—To attempt *by any means other than* those specified in any of the preceding sections of this Act to commit murder is Felony. P. S. for life or two years' imprisonment.

Letters Threatening to Murder.

Section 16.—To maliciously send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person, is felony. Punishment, penal servitude for ten years, or imprisonment for two years. Males under sixteen may in addition be whipped.

Causing Danger to Life or Bodily Harm.

Section 17.—To unlawfully and maliciously prevent or impede *any shipwrecked person* in his endeavour to save his life, or similarly to prevent or impede any person endeavouring to save the life of any such shipwrecked person, is Felony. P. S. for life, or two years' imprisonment.

Section 18.—**Wounding.**—To unlawfully wound (*e*) or *cause any grievous bodily harm* to any person, or shoot at, or attempt to discharge any kind of loaded arms at any person, with intent to maim or disable him, or to do him grievous bodily harm, or with intent to prevent the arrest of any person, is Felony. P. S. for life or two years' imprisonment.

Section 19.—**Loaded Arms.**—Any gun, pistol, or other arms which shall be loaded in the barrel with gunpowder or any other explosive substance, and ball, shot, slug, or other destructive material, shall *be deemed to be loaded arms* within the meaning of the Act.

Section 20.—**Grievous bodily harm.**—To unlawfully and maliciously wound or inflict any grievous bodily harm (*f*) upon any other person, either with or without any weapon or instrument, is a Misdemeanor.

Section 21.—To attempt by any means whatsoever to choke, suffocate, or strangle any other person, or to attempt to render any other person insensible, unconscious, or incapable of resistance, with intent to commit any indictable offence, is Felony. P. S. for life, or two years' imprisonment.

Section 22.—**Chloroform.**—To unlawfully apply to or cause to be taken by or attempt to apply or administer to, any person, any chloroform, laudanum, or other stupefying drug, matter or thing, with intent to commit any indictable offence on any other person, is Felony. P. S. for life or two years' imprisonment.

(*e*) See under ASSAULTS, (General Subjects), *ante*.

(*f*) To constitute grievous bodily harm it is not necessary that the injury should be either permanent or dangerous. If it be such as to *seriously interfere with health or comfort*, it is sufficient. *R.* v. *Ashman*, 1 F. & F. 88.

Section 23.—**Poison, etc.**—To unlawfully administer to or cause to be taken by any other person any poison or other destructive or noxious thing, so as *thereby to endanger* life or cause grievous bodily harm, is Felony. P. S. for ten years or two years' imprisonment.

Section 24.—To unlawfully and maliciously administer to or cause to be taken by any other person any poison or other destructive or noxious thing, *with intent to injure, aggrieve, or annoy* such person is a Misdemeanor. P. S. for five years or two years' imprisonment.

Section 25.—If, upon the trial of any person for any felony in the last but one preceding section mentioned, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is *guilty of any misdemeanor* in the last preceding section mentioned, the jury may acquit the accused of such felony, and find him guilty of such Misdemeanor.

Section 26.—**Apprentice or servant.**—Whosoever, being legally liable to provide for any apprentice or servant necessary food, clothing, or lodging, shall wilfully and without legal excuse refuse or neglect to provide the same, or shall unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant, *so that life shall be endangered, or health injured*, shall be guilty of a Misdemeanor. P. S. for five years or two years' imprisonment.

Section 27.—**Exposing children.**—Whosoever shall unlawfully abandon or expose any child, being under the age of two years, whereby *life of such child shall be endangered, or health injured*, shall be guilty of a Misdemeanor. P. S. for five years or two years' imprisonment.

Section 28.—**Gunpowder.**—To unlawfully, *by the explosion* of gunpowder or other explosive substance, burn, maim, disable, or *do any grievous bodily harm* to any person, is Felony. P. S. for life or two years' imprisonment. Males may be whipped.

Section 29.—**Corrosive fluid.**—Whosoever shall unlawfully and maliciously cause any gunpowder or explosive substance to explode, or send explosive substance, or cast or throw at or upon any person *any corrosive fluid or any destructive or explosive substance*, with intent to burn, maim, disfigure, or disable any person, or to do grievous bodily harm to any person, shall (whether bodily injury be effected or not), be guilty of Felony. P. S. for life, or two years' imprisonment. Males may be whipped.

Section 30.—**Explosive.**—Whosoever shall unlawfully place or throw into, against or near any building, ship, or vessel any gunpowder or other explosive substance, with intent to do any bodily injury to any person, shall be guilty of Felony. P. S. for fourteen years, or two years imprisonment. Males may be whipped.

Section 31.—**Spring guns, traps, etc.**—Whosoever shall set, or cause to be set, any *spring gun, man trap, or other engine* calculated to destroy human life, or inflict grievous bodily harm, with intent that the same may destroy or inflict grievous bodily harm upon a trespasser or other person, shall be guilty of a Misdemeanor. P. S. for five years or two years' imprisonment.

Proviso *re* subsequent possession or occupation of premises where trap or engine placed.

Proviso permitting trap for vermin, or gun, trap, or engine in dwelling for protection of same.

Section 32.—**Railways.**—To unlawfully and maliciously put upon or across any railway, any wood, stone, or thing, or to remove, or displace any rail, sleeper, or other thing belonging to any railway, or to divert any

points or machinery, or to show or remove any signal or light near any railway, or to cause anything to be done, *with intent to endanger the safety of any person*, is Felony. P. S. for life, or two years' imprisonment. Males may be whipped.

Section 33.—To unlawfully and maliciously throw, or cause to strike, etc., any engine or carriage used upon any railway, any wood, stone, or other matter or thing, with intent to injure or endanger the safety of any person, is Felony. P. S. for life, or two years' imprisonment.

Section 34.—Whosoever, by any unlawful act, or by any wilful omission or neglect, shall cause to be endangered the *safety of any passenger in or upon a railway*, or shall aid or assist therein, shall be guilty of a Misdemeanor. Punishment, two years' imprisonment.

Section 35.—**Furious driving.**—Whosoever, having the charge of any carriage or vehicle, shall, by wanton or furious driving (*g*) or racing, or other wilful misconduct, or by wilful neglect, do, or cause to be done, any bodily harm to any person whatsoever, shall be guilty of a Misdemeanor. Punishment, two years' imprisonment.

Assault.

Section 36.—To obstruct or prevent, by threats or force, *any clergyman or other minister* from celebrating Divine service, or from performance of duty in burial of dead in any burial place, or to offer any violence to, or upon any civil process, etc., to arrest any clergyman, or other minister engaged in, or about to engage in the aforesaid rites and duties, or going to or returning from the performance of such, is a Misdemeanor. Punishment, two years' imprisonment.

Section 37.—To assault or wound any magistrate, officer, or other person *preserving wreck*, is a Misdemeanor. P. S. for seven years or two years' imprisonment.

Section 38.—To assault any person with intent to commit felony, or to assault or obstruct, etc. any peace officer or person aiding such *officer in the execution of his duty*, or to assault any person with intent to resist or prevent any lawful arrest or detainer, is a Misdemeanor. Punishment, two years' imprisonment.

Section 39.—To beat or threaten any person, with intent to deter him from buying, selling, or disposing of, or to compel him to buy, or sell, *any wheat or grain*, or other produce, in any market or place, or to beat or threaten any person having care or charge of same, with intent to stop conveyance of same, is punishable on conviction before two justices with three months' imprisonment.

Section 40. To unlawfully and with force hinder or prevent *any seaman, keelman, or caster* from exercising his trade or occupation, or to use any violence to any such person with intent to hinder or prevent him from working at or exercising the same, is punishable on conviction before two justices with three months' imprisonment.

Section 41.—Assaults arising from combination. [Repealed by s. 7 of 34 & 35 Vict. c. 32.]

(*g*) Regarding furious *riding* (not included in section), see *Williams* v. *Evans*, L. R. 1 Ex. D. 277; 41 J. P. 151. See also Highways, (General Subjects), *ante*.

Section 42.—**Common assault.**—Any person unlawfully assaulting or beating any other person is liable on conviction before two justices to imprisonment for two months, or to a fine not exceeding 5*l.* (including costs), or in default two months' imprisonment.

Section 43.—When any person shall be charged before two justices with an assault or battery *upon any male child* (under fourteen years), or *upon any female*, on complaint of party aggrieved or otherwise, the said justices, if the assault or battery is of an aggravated nature, may proceed to hear and determine the same in a summary way. Offenders are liable to six months' imprisonment, or a fine of 20*l.*

Section 44.—If the justices, upon the hearing of any such case of assault or battery upon the merits, shall deem the offence not to be proved, or so trifling as not to merit any punishment, and shall dismiss the complaint, they shall make out a certificate stating the fact of such dismissal, and shall deliver same to defendant.

Section 45.—If any person against whom any such complaint shall have been preferred, shall have obtained such certificate, or, having been convicted, shall have paid the fine or undergone the punishment awarded, he shall be released from all further proceedings for same.

Section 46.—In case the justices shall find the assault to have been accompanied by any attempt to commit felony, or shall consider that same should be prosecuted by indictment, they shall not adjudicate thereon. Justices are prohibited from hearing any case of assault involving any question of title to lands, etc., or any bankruptcy, insolvency, or execution under process of court.

Section 47.—Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable to penal servitude for five years, or imprisonment for two years; and whosoever shall be convicted upon an indictment for a common assault shall be liable to be imprisoned for one year.

Rape, Abduction, Defilement, etc. (*h*).

Section 48 (*i*).—Whosoever shall be convicted of the crime of Rape shall be guilty of Felony. P. S. for life or two years' imprisonment.

Section 49.—*Procuring defilement of girl under age by fraudulent means.*—This section is repealed by the Criminal Law Amendment Act, 1855: see title Women and Girls, *ante*.

Section 50 (*k*).—*Carnally knowing a girl under* 10 *years.*—Whosoever shall unlawfully and carnally know and abuse any girl under the age of ten years, shall be guilty of Felony. P. S. for life or imprisonment for two years.

Section 51 (*k*).—*Carnally knowing a girl between the ages of* 10 *and* 12.—Whosoever shall unlawfully and carnally know and abuse any girl being above the age of 10 years and under the age of 12 years shall be guilty of a Misdemeanor. P. S. for five years or two years' imprisonment.

(*h*) See title Women and Girls (General Subjects), *ante*.

(*i*) By 48 & 49 Vict. c. 69, s. 20, every person charged under this section and ss. 52 to 55 inclusive of this Act, and the husband and wife of such person, shall be competent but not compellable witnesses.

(*k*) Sections 50 & 51 are repealed by 38 & 39 Vict. c. 94, s. 2, *but this Act is again repealed* by 48 & 49 Vict. c. 69, s. 19 (Criminal Law Amendment Act, 1885. See title Women and Girls, *ante*.

*Section 52.—Whosoever shall be convicted of any indecent assault upon any female, *or of any attempt to have carnal knowledge of any girl under 12 years of age* (*l*) shall be liable to be imprisoned for any term not exceeding two years.

*Section 53.—**Abduction.**—Where any woman of any age shall have any interest, whether legal or equitable, in any real or personal estate, or shall be a presumptive heiress or co-heiress, whosoever shall, *from motives of lucre*, take away or detain such woman against her will, with intent to marry or carnally know her, or to cause her to be married or carnally known; and whosoever shall fraudulently allure, take away, or detain such woman, being under the age of twenty-one years, out of the possession and against the lawful will of her father or mother, or of any other person having the lawful care or charge of her, with intent to marry or carnally know her, or to cause her to be married or carnally known, shall be guilty of Felony. Punishment, P. S. for fourteen years, or two years' imprisonment. And whosoever shall be convicted of any offence against this section shall be incapable of taking any estate or interest in any real or personal property of such woman; and if any such marriage shall have taken place, such property shall, upon such conviction, be settled in such manner as the Court of Chancery shall appoint.

*Section 54 (*m*).—Whosoever shall, by force, take away or detain against her will any woman of any age, with intent to marry or carnally known her, or to cause her to be married or carnally known, shall be guilty of Felony. P. S. for fourteen years, or two years' imprisonment.

Section 55.—Whosoever shall unlawfully take or cause to be taken any unmarried girl, *being under the age of sixteen years*, out of the possession and against the will of her father or mother, or other person having lawful charge of her, shall be guilty of a Misdemeanor. Punishment, two years' imprisonment.

[Regarding subjects referred to in sections marked with an asterisk, see also WOMEN AND GIRLS (General Subjects), *ante*].

CHILD-STEALING.

Section 56.—Whosoever shall unlawfully, either by force or fraud, lead or take away, or decoy or entice away or detain, any child under the age of fourteen years, with intent to deprive any parent or guardian of the possession of such child, or with intent to steal any article upon the person of such child, to whomsoever such article may belong, and whosoever shall, with any such intent, knowingly receive or harbour such child, shall be guilty of Felony. Punishment, P. S. for seven years or two years' imprisonment. Males may be whipped.

Proviso as to claim of right by father or mother.

BIGAMY.

Section 57.—Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland, or elsewhere, shall be guilty of Felony. P. S. for seven years or two years' imprisonment. And any such offence may be dealt with in any county or place

(*l*) The words in italics are now repealed by 48 & 49 Vict. c. 69, s. 19; see title WOMEN AND GIRLS (General Subjects), *ante*.

(*m*) See also s. 7 of 48 & 49 Vict. c. 69.

in England or Ireland where the offender shall be in custody, as if the offence had been committed in that county or place: Provided that nothing in this section contained shall extend to any second marriage contracted elsewhere than in England and Ireland by any other than a subject of Her Majesty, or to any person marrying a second time *whose husband or wife shall have been continually absent from such person for the space of seven years* then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

Attempts to Procure Abortion (*n*).

Section 58.—Every woman, *being with child*, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, *whether she be or be not with child*, shall unlawfully administer to her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of Felony. P. S. for life or two years' imprisonment.

Section 59.—Whosoever shall unlawfully and knowingly supply or procure any poison or noxious thing, or any instrument or thing whatsoever, with intent to procure the miscarriage of any woman, *whether she be or be not with child*, shall be guilty of a Misdemeanor. P. S. for five years or two years' imprisonment.

Concealing the Birth of a Child (*o*).

Section 60.—If any woman shall be delivered of a child, every person who shall, *by any secret disposition of the dead body* of the said child, whether such child die before, at, or after its birth, endeavour to conceal the birth thereof, shall be guilty of a Misdemeanor. Punishment, imprisonment for two years. Provided that if any person tried for the murder of any child shall be acquitted thereof, the jury may find, in case it shall so appear in evidence, that the child had recently been born, and that such person did, by some secret dispositon of the dead body of such child, endeavour to conceal the birth thereof, and the court may pass sentence as if such person had been convicted upon an indictment for the concealment of the birth.

Unnatural Offences.

Section 61.—Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than ten years.

Section 62.—Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or

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(*n*) See title Women and Girls (General Subjects), *ante*.

(*o*) See title Concealment of Birth (General Subjects), *ante*.

of any indecent assault upon any male person, shall be guilty of a Misdemeanor. Punishment, penal servitude not exceeding ten years or two years' imprisonment.

Section 63.—Whenever, upon the trial for any offence punishable under this Act, it may be necessary to prove *carnal knowledge*, the carnal knowledge shall be deemed complete upon proof of penetration.

Making Gunpowder to Commit Offences.

Section 64.—To knowingly have in possession, or to make or manufacture, any gunpowder, explosive substance, or noxious thing, or any machine or thing with intent to commit any of the felonies in this Act mentioned, is a Misdemeanor. Punishment, imprisonment for two years. Males may be whipped.

Section 65 (*p*).—Any justice of the peace of any county or place in which any such gunpowder, or other explosive, dangerous, or noxious substance or thing, or any such machine, engine, instrument, or thing is suspected to be made or kept, upon reasonable cause assigned may issue a warrant to search in the daytime, any house, place, cart, ship, or vessel, in which the same is suspected to be made, kept, or carried; and every person acting in the execution of any such warrant shall have the same powers and protections which are given to persons searching for unlawful quantities of gunpowder under the warrant of a justice by 23 & 24 Vict. c. 139.

Other Matters.

Section 66.—**Arrest.**—Any constable or peace officer may take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony in this Act mentioned, and shall take such person as soon as reasonably may be before a justice of the peace, to be dealt with according to law.

Section 67.—In the case of every felony punishable under this Act, principals in the second degree and accessories before the fact are punishable in the same manner as principals in the first degree; and accessories after the fact (except in murder) are liable to imprisonment for two years; and accessories after the fact to murder are liable to penal servitude for life or imprisonment for two years. Abettors in misdemeanors are punishable as principal offenders.

Section 68 as to jurisdiction of Admiralty.

Sections 69 to 79 relate to procedure, costs, fines, etc.

(*p*) Amended by 38 & 39 Vict. c. 17, s. 86.

II.—Licensing Acts.

THE ALEHOUSE ACT, 1828.

(9 Geo. 4, c. 61.)

An Act to regulate the grants of Licences to Keepers of Inns (q) and Alehouses, etc. [15th July, 1828.]

General licensing meetings are to be held annually in counties (Middlesex and Surrey excepted) on some day between August 20th and September 14th inclusive. The justices may grant licences to such persons as they shall, in the exercise of their discretion, "deem fit and proper" (s. 1).

Justices to meet twenty-one days (at least) before general annual licensing meeting, and fix day and hour for holding same, "by precept under their hands," such precept to be directed to the high constable of the division or place, requiring him within five days of receipt thereof to order notices to be affixed on door of church, chapel, etc., and served on each justice in division, and on each innkeeper or person who shall have given notice of his intention to keep an inn (s. 2).

Section 3 gives power for adjournment of meetings, of which notice has to be given (see s. 5).

Section 4 requires that special sessions for transferring licences be appointed.

Section 5 requires notice to be given where meetings are adjourned.

Sections 7 and 8 as to qualifications and jurisdiction of justices for liberties, etc.

Section 9.—Questions respecting licences are to be determined by majority of justices present at meeting (*r*).

Section 12 enacts that any person hindered by sickness from attending licensing meeting may authorize another person to attend for him.

Section 14 contains special provisions regarding death, change of occupancy, etc., of licensed person.

Section 15.—Regarding fees to be paid for licences.

Section 16 debars sheriff's officer from becoming a licensee.

By section 17 no licence for the sale of excisable liquors to be drunk on premises can be granted by Excise to any person unless such person shall have previously obtained a licence from justices under this Act.

Sections 20, 21, 22, 23, 25, 26, 27, and 28 are repealed, except as to renewals and transfers (ss. 4 and 14).

Section 24 provides for recovery of penalties from justices.

(*q*) An inn is a place instituted for passengers and wayfaring men. A tavern is not within this definition (47 J. P. 57). It is an indictable offence for an *innkeeper* to refuse to entertain a traveller (*R.* v. *Ivens*, 7 C. & P. 213), the only excuses being that the innkeeper has no accommodation, or that the traveller is an unfit guest. *R.* v. *Rymer*, 46 J. P. 638.

(*r*) See also Licensing Act. 1872 (35 & 36 Vict. c. 94), ss. 37 to 50 *post*.

Section 30 enacts that actions against justices, constables, etc., shall be commenced within three calendar months after cause of action.

Section 36.—Act not to affect Universities, or time of licensing in London, or alter any law of Excise, or prohibit sale of beer at fairs in certain cases.

Section 37.—Interpretation clause.

SCHEDULES TO ACT.

Schedule A gives form of notice which has to be affixed on the door of house, and of church or chapel, *re* proposed inn or alehouse.

Schedule B —Notice of intention of licensed victualler to apply at special sessions for transfer of licence.

LICENSING ACT, 1842.

(5 & 6 VICT. C. 44.)

Section 1 empowers justices in petty sessions to transfer licences.

Under s. 2, if licence be lost a certified copy, where endorsed, shall be considered valid, fee 2*s.* 6*d.* (s. 3).

Section 4 is repealed.

Section 5 prohibits sale of liquor on board vessels moored during "closing hours."

Section 6.—The Act does not extend to the Universities.

REFRESHMENT HOUSES ACT, 1860.

(23 VICT. C. 27.)

Section 1 as to certain duties for licences to keep refreshment houses and sell foreign wines. Charge varies according to value of premises.

Section 2.—The duties shall be deemed to be excise duties.

Section 3.—Every person keeping a shop can take out a licence to retail wine not to be consumed on the premises.

Section 4.—Every sale of foreign wine of less than two gallons, or less than one dozen reputed quart bottles, at one time, shall be deemed to be a selling by retail.

Section 6 refers to licences to be taken out by persons keeping certain refreshment houses (*b*).

Section 7. Confectioners and eating-house keepers can take out licences to sell wine to be drunk on the premises. No sheriff's officer can hold a licence.

By s. 8 wine licences are not to be granted for refreshment houses under a certain rent or annual value.

Section 9.—Penalty for keeping unlicensed refreshment house, 20*l.*

Section 10 —Licences to be granted by excise officer or authorized persons.

Section 11.—Date, expiration, and renewal of licences.

(*s*) For definition of "Refreshment House," see 39 J. P. 418.

By s. 12, on death of a licensed person, his representative may be authorized to conduct the business for remainder of term.

Sections 13, 14, and 15, repealed by 32 & 33 Vict. c. 27. (See schedule 2.)

Section 16.—A list of licences is to be kept by supervisors of excise for inspection, and copies are to be transmitted to justices' clerks.

Section 17, repealed by Licensing Act, 1872 (second schedule), relates to sale of intoxicating liquors.

Section 19.—Penalty for selling wine by retail without licence, 20*l*.

Section 21.—All liquor which shall be sold or offered for sale as *foreign wine* shall, as against the person who shall so sell or offer the same for sale, *be deemed and taken to be foreign wine*; and any fermented liquor containing a greater proportion than *forty per centum* of proof spirit shall be *deemed and taken to be spirits*.

Section 23.—Licensed retailers required to make entry of houses with excise.

Section 24.—Excise officers are empowered to enter retailers' premises.

Section 25.—Penalty on person licensed to retail wine having spirits on premises—forfeiture of spirits found and of licence.

By s. 45, the provisions of the Act are not to affect the Universities, or the Vintners' Company, London, or the borough of St. Albans, in the county of Hertford.

WINE AND BEERHOUSE ACT, 1869.

(32 & 33 Vict. c. 27.)

An Act to amend the Law for Licensing Beerhouses, and to make alterations respecting Sale of Beer, Cider, and Wine.

[12th July, 1869.]

The first three sections of Act recapitulate certain provisions of special Acts.

Section 4.—No licence or renewal of a licence for sale by retail of beer, cider (*t*), or wine, or any such articles, under said recited Acts shall (save in this Act otherwise provided) be granted except upon production of a certificate under this Act.

Any licence granted in contravention of this enactment shall be void.

Section 5.—Certificates to be granted by justices at general annual licensing meeting or adjournment thereof.

Section 7.—**Application.**—Every person intending to apply to the justices for a certificate under this Act shall, twenty-one days at least before he applies, *give notice in writing* of his intention to one of the overseers of the township or place in which the house or shop in respect of which his application is to be made is situate, *and to some constable or peace officer* acting within such parish, township, or place, and shall in such notice set forth his name and address, and a description of the licence or licences for which he intends to apply, and of the situation of the house or shop in respect of which the application is to be made; and in the case

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(*t*) The term "beer" shall include ale and porter, and the term "cider" shall include perry (s. 2 of Act).

of a house or shop not theretofore licensed for the sale by retail of beer, cider, or wine, such person shall also within the space of twenty-eight days before such application is made cause a like notice to be affixed and maintained between the hours of ten in the morning and five in the afternoon of two consecutive Sundays on the door of such house or shop, and on the principal door or on one of the doors of the church or chapel of the parish or place in which such house or shop is situate, or if there be no such church or chapel, on some other public and conspicuous place within such parish or place.

Application *for renewal only*, notice is not required.

Section 8.—The provisions of 9 Geo. 4, c. 61, are to apply to certificates under this Act (*u*).

Penalty on forgery of certificate 20*l*., or six months' imprisonment.

Sections 12—18 of Act are repealed.

Section 20.—Nothing in the Act is to affect the privileges of the Universities, the Vintners of London, or the city of St. Albans.

LICENSING ACT, 1872.

(35 & 36 Vict. c. 94.)

An Act for regulating the Sale of Intoxicating Liquors.

[10th August, 1872.]

Section 1.—This Act may be cited as the "Licensing Act, 1872."

Section 2.—The Act does not extend to Scotland.

Illicit Sales.

Section 3.—No person shall sell or expose for sale any intoxicating liquor (*x*) without being duly licensed to sell the same, or at any place where he is not authorized to sell the same. Contravention of section subjects the offender to the following penalties:—

For first offence penalty 50*l*., or one month's imprisonment.

For second offence penalty 100*l*., or three months' imprisonment, and disqualified for five years from holding licence.

For the third and subsequent offences penalty 100*l*., or imprisonment for six months, and may be disqualified for ever from holding licence.

In addition the licence holder shall, on conviction for a second or any subsequent offence, forfeit his licence. Liquor and vessels found may also be forfeited.

The section contains a clause enabling heirs or representatives to sell on licensed premises between death of person and special sessions next ensuing.

(*u*) Under s. 8, justices could only refuse to grant certificates on certain grounds; but 45 & 46 Vict. c. 34, following 43 Vict. c. 6, s. 1, now *gives absolute discretion to justices* to grant or refuse licences for the consumption of beer off the premises, and provides for certificates being only granted at the general annual licensing meeting. See p. 212.

(*x*) Botanic beer made without hops is not within the Act. *Leah* v. *Minnes*, 47 J. P. 148.

Section 4.—Occupiers of unlicensed premises on which liquor is sold, shall, if privy to sale, be subject to same penalties as persons selling without licence.

Section 5.— **Drinking on premises.**—A person licensed to sell intoxicating liquor *not to be drunk on the premises* shall be liable to the following penalties if, with his privity or consent, a purchaser drinks such liquor on the premises where the same is sold, or on any highway adjoining (*y*) or near such premises :—First offence, penalty 10*l.*; second and any subsequent offence, penalty 20*l.* The expression "premises where the same is sold" shall include any premises adjoining or near the premises where the liquor is sold, if belonging to or under control of seller, or used by his permission.

Section 6.—Where a person licensed as aforesaid suffers any liquor to be taken out of the premises to be sold for his benefit or profit, and to be consumed in any house, tent, shed, or building belonging to, hired, or occupied by him, or in any place, such licensed person shall be liable to the penalties set forth in section 5 of Act. The ownership of the premises need not necessarily be proved if satisfactory proof be given that the liquor was taken there with intent to evade the conditions of licence.

Section 7.—**Sale to children.**—Every holder of a licence who sells or allows any person to sell, *to be consumed on the premises*, any description of spirits, to any person apparently *under the age of sixteen years*, is liable to penalties—20*s.* for first offence; 40*s.* for second and subsequent offences.

Section 8.—**Standard measure.**—All intoxicating liquor not sold in cask or bottle, or in less quantity than half-a-pint, shall be sold in measures of imperial standards. Penalty for contravention of section, 10*l.* for first offence, and 20*l.* for second and subsequent offences; illegal measures to be forfeited.

Section 9.—**Internal communications.**—Every person who makes or uses any internal communication between licensed premises and any unlicensed premises used for public entertainment or resort, or as a refreshment house, is liable to a penalty of 10*l.* a day and forfeiture of licence.

Section 10.—To have on his licensed premises any intoxicating liquor not authorized to be sold there, shall forfeit such liquor and the vessels containing it, and renders offender liable to a penalty of 10*l.* for the first offence, and 20*l.* for any subsequent offence, and forfeiture of liquor.

Section 11.—Every licensed person has to keep affixed to his premises his name, with addition of the word "licensed," and words sufficient to express the business for which licensed. See s. 28, Licensing Act, 1874, *post*.

(*y*) If a person drinks the liquor at or near the door, or a person with a waggon and horses draws up in front of or near to the licensed premises, and then purchases liquor, and with the privity or consent, expressed or implied, of the landlord drinks it near to the premises, it seems an offence would be committed. Beer was purchased and carried across a highway to the occupier of a cottage, who handed the jug back over his garden wall to persons who drank part of the beer on the highway. The jug was re-filled, the beer drunk as before, and appellant saw what was going on. The conviction was quashed, but had there been clear evidence that appellant connived at the drinking the conviction might have been upheld. *Bath* v. *White*, 26 W. R. 617; 42 J. P. 375; Stone's Justices' Manual, 29th ed., p. 438.

Public Order, Drunkenness, etc.

Section 12.—Every person found drunk in any highway or other public place, whether a building or not, or on any licensed premises (*z*), shall be liable to the following penalties:—First offence, 10*s.*; second offence within twelve months, 20*s.*; subsequent offence within twelve months, 40*s.* Every person who in any highway or other public place, whether a building or not, is guilty while drunk of *riotous* (*a*) *or disorderly behaviour*, or who is *drunk while in charge* on any highway or other public place of any carriage, horse, cattle, or steam engine, or who is drunk when in possession of any *loaded firearms*, may be apprehended, and shall be liable to a penalty of 40*s.*, or one month's imprisonment. In case of commitment for non-payment of penalty, the court may order the imprisonment to be *with hard labour*.

Section 13.—A licensed person permitting drunkenness or any violent, quarrelsome, or riotous conduct to take place on his premises, or selling intoxicating liquor to a drunken person, is liable to a penalty of 10*l.* for first offence, and 20*l.* for second and subsequent offences.

Section 14.—**Disorderly houses.**—If any licensed person knowingly permits his premises to be the habitual resort or place of meeting of reputed prostitutes, he shall, if he allows them to remain thereon longer than is necessary for the purpose of obtaining reasonable refreshment, be liable to a penalty of 10*l.* for first offence, and 20*l.* for second and subsequent offences.

Section 15. — **Disqualification.** — Any licensed person convicted of permitting his premises to be a brothel, is liable to a penalty of 20*l.* and forfeiture of licence, with permanent disqualification for licence.

Harbouring Police.

Section 16.—If any licensed person—

(1.) Knowingly harbours *or suffers to remain on his premises* any constable during any part of the time appointed for such constable being on duty, unless for the purpose of keeping or restoring order or in execution of his duty; or

(2.) Supplies any liquor or refreshment, whether by way of gift or sale, *to any constable* (*b*) on duty unless by authority of some superior officer of such constable; or

(3.) Bribes or *attempts to bribe any constable*,

he shall be liable to a penalty of 10*l.* for first offence, and 20*l.* for second or subsequent offences.

(*z*) A licensed house is a private place after the place is closed to the public. A publican cannot, therefore, be convicted of being found drunk on his own licensed premises after the house is closed. *Lester* v. *Torrens*, 25 W. R. 694; 41 J. P. 821.

(*a*) The word "riotous" means noisy, turbulent, or uproarious conduct, disturbing the quiet and good order of a place, and is not used in the same sense as in an indictment for a riot.

(*b*) See *Mullins* v. *Collins*, 38, J. P. 84.

Section 17.—**Gaming.**—If any licensed person—

(1.) Suffers any gaming or *any unlawful game* to be carried on on his premises; or

(2.) Opens, keeps, or uses, or suffers his house to be opened, kept or used in contravention of the Act (16 & 17 Vict. c. 119) intituled "An Act for the Suppression of Betting Houses," he shall be liable to a penalty of 10*l.* for the first offence, and 20*l.* for second and subsequent offences.

Section 18.—**Excluding drunkards.**—Any licensed person may refuse to admit to and *may turn out from his licensed premises* any person who is drunken, violent, quarrelsome, or disorderly, or whose presence on his premises would subject him to a penalty under this Act. Any such person who upon being requested by such licensed person, or his agent or servant, or any constable, to quit such premises, *refuses or fails* so to do, shall be liable to a penalty of 5*l.*, *and all constables are required* on the demand of such licensed person, agent, or servant, to expel or assist in expelling such person, using only such force as may be required for that purpose (*c*).

Sections 19 to 22 are repealed by Licensing Act, 1874, s. 33, *post*.

Section 23.—**Riots.**—Any two justices of the peace acting for any place where any riot or tumult happens or is expected to happen, may order every licensed person in or near the place to close his premises during any time which the justices may order. Penalty for disobedience of order, 5*l.*, and premises may be forcibly closed.

Section 24, regarding closing hours, is repealed by Licensing Act, 1874, s. 33. See also ss. 3 to 11 of that Act, *post*.

Section 25.—**Found on premises.**—Any person *found on licensed premises during closing hours* shall, unless he satisfies the court that he was an inmate, servant, or lodger, or a *bonâ fide* traveller (or that his presence was not in contravention of Act), be liable to a penalty of 40*s.* Any constable may demand name and address of any person so found during closing hours, and may (if he has reason to doubt) require evidence of correctness of same, and if the person fail to give such evidence, may apprehend him without warrant. Penalty for failing to give correct name and address, 5*l.* Similar penalty for attempting to obtain at any premises any intoxicating liquor during closing hours by any false representation.

Section 26.—**Exemption order.**—The local authority may grant an order exempting persons from provisions of Act regarding closing of premises, where it appears desirable that such premises should remain open for the accommodation of any considerable number of people attending any public market or following any lawful trade or calling in immediate neighbourhood of such premises (see s. 4 of Licensing Act, 1874); but premises must be closed between hours of 1 and 2 a.m.

Notice as to exemption order must be affixed to premises. Penalty, 5*l.* for contravention and 10*l.* for falsely affixing any such notice.

(*c*) There is no authority to arrest, only to eject.

The following persons shall be deemed to be local authorities for purposes of Act, viz. :—

(1.) In the metropolitan district, the commissioner of police for metropolis.

(2.) In the city of London and liberties, the commissioner of city police.

(3.) In any other place, *two justices of the peace* in petty sessions assembled.

Section 27.—Intoxicating liquors not to be drunk at refreshment house during the hours when house would be closed if it were an inn.

Section 28.—Amendment of law as to certain refreshment houses to be closed at ten p.m.

Section 29. —**Occasional Licenses** —The local authority of any licensing district may, if it thinks fit, grant to any licensed victualler or keeper of a refreshment house in which intoxicating liquors are sold an *occasional licence* exempting him from the provisions of this Act relating to closing of premises during certain hours on any *special occasion* or occasions (*d*) which are to be specified in the licence.

Repeated Convictions.

Section 30.—If any licensed person on whose licence *two convictions* have been recorded is again convicted of any offence which involves further record—

(1.) He shall *forfeit his licence and be disqualified* for five years from holding any licence ; and

(2.) The *premises shall* (unless ordered otherwise) be disqualified from receiving any licence *for two years* from the date of such third conviction :

But nothing in this section shall prevent the infliction of any other penalty or imprisonment allowable under provisions of Act.

Section 31.—Contains additional provisions regarding convictions of persons who may become licensed,

(1.) Second and subsequent convictions recorded to be also recorded in register of licences.

(2.) When *four convictions* (whether of the same or of different licensed persons) have *within five years* been so recorded against premises, the premises shall during one year be disqualified.

(3.) Similar disqualification if licences of two persons licensed in respect of the same premises are forfeited within period of two years.

Notice of disqualification to be served on owner.

Section 32.—Evidence of convictions shall not after five years from date of same be receivable in evidence for purpose of increasing penalty.

Section 33.—Where a conviction is directed to be recorded on licence, the omission to record same shall not exempt person or premises from any penalty to which liable, and on satisfactory proof given, the court may order the omitted conviction to be recorded.

(*d*) A difference of opinion exists as to what is a "special occasion." Some persons contend that the discretion of the local authority is limited to the grant of a licence for a special entertainment in the licensed house, such as a ball or club supper ; others consider that a public holiday is also a special occasion, and this appears to be the opinion of the Home Office. See 46 J. P. 776.

Section 34.—Any person attempting to deface or obliterate any record of conviction on licence, is liable to a penalty of 5*l.*

Entry on Premises.

Section 35, regarding entry on premises by constables, is repealed by Licensing Act, 1874, s. 33; but see now s. 16 of that Act, *post*.

[The constable named in the warrant may execute the warrant, and if need be by force, at any time within one month of the date thereof.]

Register.

Section 36.—The section enacts that a register of licences is to be kept by the clerk of the licensing justices, and all forfeitures, disqualifications, records of convictions, etc., shall be entered on the register.

Ratepayers, owners of licensed premises, and holders of licences within district, upon payment of a fee of 1*s.*, and *officers of police* and Inland Revenue without payment, shall be entitled to inspect and take copies of or extracts from the register.

Grant of Licences.—Amendment of Law.

Section 37.—*In counties* a grant of a new licence shall not be valid unless it is confirmed by a standing committee of the county justices, in this Act called the county licensing committee. The justices in quarter sessions assembled for every county shall annually appoint from among themselves a county licensing committee of not less than three nor more than twelve members; three to form a quorum. Vacancies to be filled by justices in quarter sessions. A county licensing committee shall be deemed to be a standing committee for the year succeeding their appointment. Members retiring at end of year may be re-appointed, and failing any such appointment, the retiring members may continue to act as the committee until their successors are appointed. Clerk of the peace to be clerk of the committee.

Section 38.—The section contains regulations regarding *licensing committees for boroughs* in which there are *ten justices* acting for the borough. The committee is to be appointed annually and is to consist of from three to seven justices, three to form quorum. The same rule shall apply regarding vacancies, retirement, etc., as in the case of county committees (see s. 37).

The grant of a new licence by a borough licensing committee must be confirmed by the whole body of borough justices, or by a majority. The section also contains regulations for appointment of a joint committee of county and borough justices in boroughs where there are not ten justices acting (see s. 21 of Licensing Act, 1874, *post*).

Section 39.—Stipendiary magistrates can act as licensing justices.

Section 40.—Every applicant for a new licence, or transfer of licence, shall publish notice of such application as follows, viz.:—

(1.) In the case of *a new licence*, he shall cause notice to be given, affixed and maintained in manner directed by s. 7 of "The Wine and Beerhouse Act, 1869," *ante*, and shall advertise such notice in press not less than three weeks before application.

(2.) In the case of the *transfer of a licence* he shall, fourteen days prior to special sessions, serve notice upon one of the overseers of the parish, and *on the superintendent of police of the district*.

This notice shall be signed by the applicant or his agent, and shall set forth the name of the person to whom it is intended the licence shall be transferred, together with his residence, trade or calling during the six months preceding.

(3.) Any licence may be authenticated in similar manner to certificate under sub-s. 2 of s. 4 of Wine and Beerhouse Amendment Act, 1870.

Section 41 amends s. 2 of 5 & 6 Vict. c. 44, which empowers justices to receive a copy of licence lost or mislaid. This section enacts that such section be construed as if after the words "lost or mislaid," there were inserted the words "or if the application for the grant of a licence has been wilfully withheld by the holder thereof."

Section 42.—Where a licensed person applies for the *renewal of his licence*—

(1.) He need not attend in person at the licensing meeting unless specially required so to do :

(2) The justices shall not entertain any objection to or take any evidence with respect to the renewal of such licence, *unless written notice* of an intention to oppose the renewal has been served on such holder not less than seven days before the annual licensing meeting; and justices may adjourn consideration of grant.

(3.) The justices can only receive evidence on oath.

Subject as aforesaid, licences shall be renewed as heretofore.

Section 43.—As to confirmation of licences by county and borough authorities (see s. 25 of Act of 1874, *post*).

Section 44.—Licences shall not be granted to disqualified persons or for disqualified premises.

Section 45.—As to qualification of premises for licences,

(*a*.) Railway refreshment room excepted, shall be of the following annual value :—

In London and towns of 100,000 inhabitants 50*l*. per annum, if the licence is not for spirits 30*l*. per annum. In towns of 10,000 inhabitants 30*l*. per annum, or if not for spirits 20*l*. per annum.

If situated elsewhere and not within any such town as above mentioned 15*l*. per annum, or if not for spirits 12*l*. per annum.

(*b*.) The premises shall be structurally adapted to the class of licence for which a certificate is sought. A house licensed for the sale of spirits shall contain two rooms, and if the licence do not authorize the sale of spirits, one room for the accommodation of the public.

Section 46.—As to granting of licences under the Wine and Beerhouse Acts, 1869 and 1870.

Section 47.—Licensing justices can take such means as may seem to them best for ascertaining annual value of premises.

Section 48.—Licences shall be in form prescribed by Secretary of State A renewal of a licence may be made by endorsement on the licence, or by issue of a copy of the old licence, convictions within previous five years being endorsed thereon.

Section 49.—As to regulations regarding *six-day licences*. The holder of such licence is required to keep his premises closed during Sunday, and

the notice affixed to premises shall indicate that such licence is for *six days only*.

Section 50.—Licences may be removed from one district to another, within the same county, subject to certain conditions.

Legal Proceedings.

Section 51.—As to summary proceedings for offences under Act.

Section 52.—As to appeal to quarter sessions.

Section 53.—The Commissioners of Inland Revenue may, by order, permit continuance of licence during pendency of appeal against refusal to renew, or where an appeal is made against a conviction, under which licence is forfeited, the court may, by order, grant a temporary licence during pendency of appeal.

Section 54.—Conviction, etc., not to be quashed for want of form, or removed by *certiorari*.

Section 55.—With respect to the record of convictions of licensed persons, the following provisions shall have effect where the Act requires the conviction to be recorded on licence, viz. :—

(1.) The licensed person shall produce his licence, and the summons shall so state :

(2.) In cases of conviction particulars thereof, and the penalty imposed, shall be endorsed on the licence :

(3.) The particulars shall be entered in the register of licences :

(4.) Notice to be sent by clerk of court if that officer be not the clerk to the licensing justices :

(5.) Where the licence is forfeited, or any person or premises disqualified, the licence shall be retained by the clerk, and notice sent to officer of district.

Section 56.—The section contains provisions to protect owners of licensed premises in cases of *offences committed by tenants*. Owners are entitled to be served with *notice of conviction of tenants* for offences a repetition of which may disqualify premises; the owners may appeal against conviction on various grounds. [The last paragraph of this section is repealed.]

Section 57.—Where a licensed person is convicted of more offences than one committed *on the same day*, the court has a discretion as to recording one or some only on his licence.

Section 58.—The register of licences shall be receivable in evidence. Endorsements and copies of entries purporting to be signed by clerk shall be evidence without proof of signature of person signing the same.

Section 59.—Nothing in this Act shall prevent persons from being indicted or punished under any other Act.

Miscellaneous.

Section 60.—**Disqualification of justices.**—*No justice shall act* for any purpose under any of the Intoxicating Liquor Licensing Acts—except in cases of offences against public order (s. 12 of this Act)—*who is or is in partnership with or holds any share* in any company which is a common brewer, distiller, maker of malt for sale, or retailer of malt or of any intoxicating liquor in the licensing district or in *the districts adjoining* that in which such justice usually acts; and no justice shall act *for any purpose* under this Act, or under any of the Intoxicating Liquor Acts, in respect of any premises in the profits of which he is interested, or of which

he is wholly or partly the owner, lessee, or occupier, or the manager or agent for owner, lessee, or occupier. Penalty, 100*l.*

Provided that—

(1.) If interest be *only legal* and not beneficial it does not disqualify :

(2.) No justice shall be liable for more than one offence :

(3.) Act done by disqualified justices is not to be invalid.

Section 61.—The section extends the jurisdiction of justices over any pier, quay, mole, or other work extending into sea, etc.

Section 62.—**Evidence of sale.**—In proving the sale or consumption of intoxicating liquor, it shall not be necessary to show *that any money actually passed* or any liquor was *actually consumed*, if the court be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of intoxicating liquor was about to take place.

Section 63.—Where a licence under Act is forfeited, any licence granted by Inland Revenue shall be void.

Section 64.—Holders of licences or exemption orders are required to produce them for examination if demanded by a justice, constable, or officer of Inland Revenue.

Section 65.—The population of any area for the purposes of this Act shall be according to last published census.

Section 66.—**Police fund.**—Any part not exceeding a moiety of any penalty recovered under this Act may, if the court shall so direct, be paid to the *superannuation fund* of the police establishment,

Section 67.—This section, which limits the *mitigation of penalties*, is repealed by s. 12 of Licensing Act, 1874. *post*.

Section 68.—As to retail licences of wholesale dealers.

Section 69.—As to licences for sale of liqueurs by retail not to be consumed on the premises.

Section 70.—The section permits all notices and documents required by Act to be served or *sent by post*, unless otherwise expressly provided. Notices shall be either served personally or sent by registered letter.

Section 71.—The schedules to Act to have effect as part of the Act.

Saving Clauses.

Section 72.—The Act does not affect the privileges enjoyed by the Universities, the borough of St. Albans, or Company of Vintners of London.

Section 73.—Licence under Act unnecessary for certain retail sales by wine merchants, wholesale spirit dealers, etc.

Definitions.

Section 74.—"Intoxicating liquor" means spirits, wine, beer, porter, cider, perry, and sweets, and any fermented, distilled, or spirituous liquor which cannot be legally sold without a licence from Inland Revenue.

"Licence" means a licence for the sale of intoxicating liquors granted by justices in pursuance of the Intoxicating Liquor Licensing Act, 1828, including a certificate of justices granted under the Wine and Beerhouse Acts, and including a licence for the sale of sweets, which is hereby authorized to be granted in the same manner as if sweets were wine, and including a licence for the retail of spirits granted to a wholesale spirit dealer by justices.

Repeal.

Section 75.—Certain Acts set forth in the second schedule of Act are repealed.

Billiard Licences.

Section 75 also contains the following provisions as to application for billiard licence :—"In the case of persons intending to apply for *billiard licences* under the Act 8 & 9 Vict. c. 109, or for the transfer of such licences, the same notices shall be given as are by this Act required in the case of licences as defined by this Act, or as near thereto as possible; and any person convicted of an offence against the tenor of a billiard licence shall be liable to the same punishment as a licensed person under this Act is liable to for suffering any gaming or unlawful game to be carried on on premises."

Sections 76 to 90 of Act are applicable to Ireland.

Schedules to Act.

The First Schedule to the Act is repealed by 37 & 38 Vict. c. 49, s. 33.
The Second Schedule repeals several Acts and sections of Acts.

LICENSING ACT, 1874.

(37 & 38 Vict. c. 49.)

An Act to amend the Laws relating to the sale and consumption of Intoxicating Liquors. [30th July, 1874.]

Section 1.—This Act and the principal Act shall, so far as is consistent, be construed as one Act, and may be cited together as the "Licensing Acts, 1872–1874"; this Act being cited separately as the "Licensing Act, 1874."

Section 2.—Commencement of Act—1874.

Hours of Closing.

Section 3.—All premises in which intoxicating liquors are sold by retail shall be closed as follows, viz. :—

(1.) If within the Metropolitan district—

From 12.30 A.M. to 5 A.M., except on Saturday, when they close at midnight. On Sunday they may be opened from 1 to 3 P.M., and from 6 to 11 P.M.

(2.) If situate beyond the Metropolitan district and in the Metropolitan police district, or in a town or in a "populous place" as defined by this Act—

The hour of closing is 11 P.M. on week days, and 10 P.M. on Sundays, and of opening, 6 A.M. on week days, and 12.30 P.M. on Sundays.

(3.) If situate elsewhere,—

The hour of closing is 10 P.M. on all days, and of opening, 6 A.M. on week days, and 12.30 P.M. on Sundays.

Such premises, wherever situate, shall, save as hereinafter mentioned, be

closed on Sunday afternoon from 3 or 2.30 P.M. according as the hour of opening shall be 1 or 12.30 P.M. until 6 P.M.

Christmas Day and Good Friday shall count as Sunday, and the day preceding them as Saturday.

Section 4.—The exemption as to hours of closing premises in the neighbourhood of a theatre is repealed.

[But see provision contained in s. 26 of 35 & 36 Vict. c. 94 (p. 369).]

Section 5.—Exemption as to beerhouses.

Section 6.—The section gives power to justices to vary on Sunday afternoon hours of closing premises to accommodate the hours of closing to the hours of public worship.

Section 7.—Relative to early closing licences. Such licences contain a condition that the premises shall close one hour earlier than premises usually close.

A notice stating that an early closing licence has been granted shall be affixed to the premises (*e*).

Section 8.—Persons taking out six-day licences as well as early closing licences are entitled to a remission of the duty (*e*).

Section 9.—Any person who *during closing hours sells or exposes for sale* on licensed premises any intoxicating liquor, or opens such premises for the sale of liquors, or allows any intoxicating liquors, *although purchased before the hours of closing*, to be consumed in such premises, shall be liable to a penalty of 10*l.* for first offence, and 20*l.* for any subsequent offence.

Section 10. **Bona fide travellers.**—Nothing in this Act or in the principal Act contained shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor at any time to *bonâ fide* travellers or to persons lodging in his house: Provided that no person holding a six-day licence shall sell any intoxicating liquor on Sunday to any person whatever not lodging in his house.

Nothing in this Act contained shall preclude the sale at any time, at a railway station, of intoxicating liquors to persons arriving at or departing from such station by railroad.

If in the course of any proceedings against a licensed person for infringement of provisions relating to closing, such person (referred to as the defendant) fails to prove that the person to whom the intoxicating liquor was sold (referred to as the purchaser) is a *bonâ fide* traveller, but the justices are satisfied that the defendant truly believed him to be a *bonâ fide* traveller, and took all reasonable precautions to ascertain the same, the justices shall dismiss the case as against the defendant, and if they think that the purchaser falsely represented himself to be a *bonâ fide* traveller, the justices may institute proceedings against such purchaser under the twenty-fifth section of the principal Act.

A person shall not be deemed to be a *bonâ fide* traveller unless the place where he lodged during the preceding night is *at least three miles distant* from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare (p. 213).

Section 11.—Hours of closing night houses and variation of provision of 27 & 28 Vict. c. 64.

(*e*) Sections 7 and 8 are extended throughout the United Kingdom by 43 & 44 Vict. c. 20, s. 44.

Record of Convictions.

Section 12 repeals s. 67 of principal Act, and enacts that where any licensed person is convicted of an offence, the court may not, except in the case of a first offence, reduce the penalty to less than 20*s*.

Section 13.—The section contains provision regarding recording conviction on licence, and authorizes the court to declare, as part of its sentence, whether the conviction is or is not to be recorded on licence.

Such declaration shall be deemed to be part of the conviction, and may be appealed against.

As to application of provisions to principal Act.

Section 14.—A conviction for *adulteration of drink* shall be entered in the register of licences, and may be recorded on licence.

Section 15.—Where any licensed person is convicted for the first time of any one of the following offences,—

(1.) Making internal communication between licensed and unlicensed premises ;

(2.) Forging a certificate under the Wine and Beerhouse Acts ;

(3.) Selling spirits without a spirit licence ;

(4.) Any felony ;

and in consequence becomes disqualified, or if licence be forfeited, application may be made to court of summary jurisdiction for authority to carry on business until next special licensing sessions, and a further application to sessions for the grant of a licence, and for this purpose the provisions contained in the Intoxicating Liquor Licensing Act, 1828.

Entry on Premises.

Section 16.—Any constable may, for the purpose of preventing or detecting the violation of any of the provisions of the principal Act or this Act which it is his duty to enforce, *at all times enter on any licensed premises*, or any premises in respect of which an occasional licence is in force.

Every person who, by himself, or by any person in his employ, or acting by his direction or with his consent, *refuses or fails* to admit any constable in the execution of his duty demanding to enter in pursuance of this section, shall be liable to a penalty of 5*l*. for the first offence, and for second and every subsequent offence 10*l*.

Section 17.—Any justice, if satisfied that there is reasonable ground for doing so, may grant a warrant authorizing constable to enter, if necessary by force, the place named in the warrant, and search for and seize any intoxicating liquor and vessels containing same found therein which there is reasonable ground to suppose is in such place for unlawful purpose. The warrant may be executed at any time within one month of the date thereof.

Any person found at the time on the premises shall (until contrary is proved) be deemed to have been there for the purpose of illegally dealing in intoxicating liquor. Penalty 40*s*.

Any constable may demand the name and address of any person found on any premises on which he seizes, etc., any such liquor, and may, if such person fails to give name or address, or answer satisfactorily the questions put to him, apprehend him without warrant, and carry him before a justice.

Penalty for giving false name and address, etc., 5*l*.

Occasional Licences.

Section 18.—**Fairs, Races.**—Any person selling, etc., intoxicating liquor in any booth, tent, or place within limits of holding lawful and accustomed

fair or races without an *occasional licence* authorizing such sale, shall be guilty of an offence against Licensing Acts, and punishable accordingly.

[The section shall not apply to any person whose licensed premises are situate within the limits aforesaid.]

Section 19.—The section extends the closing hours in cases of occasional licences; the holder may continue to sell until such hour *not later than ten o'clock* at night as may be specified in that behalf in the consent given for granting of licence.

Section 20.—For the purposes of ss. 12 to 18 of the principal Act (Offences against Public Order), and sections for giving effect to the same, *the holder of an occasional licence shall be deemed to be a licensed person*, and the place where he sells, etc., licensed premises.

Miscellaneous.

Section 21.—The section provides that any duties now performed by borough justices or joint committee (s. 38 of principal Act) shall be supplied by qualified county justices.

Section 22.—The section contains provisions regarding provisional grant and confirmation of licences to new premises.

Section 23.—One licence of justices may extend to several excise licences.

Section 24.—A licence for consumption only of the premises shall not require confirmation.

Section 25 requires the joint committee to make rules under s. 43 of principal Act.

Section 26.—The licensing justices shall *not require the attendance* of a licensed person applying *for a renewal* of licence at the annual licensing meeting, *save for some special cause* personal to the licensed person to whom such requisition is sent. (See s. 42 of principal Act.)

Notices of adjournment of brewster sessions need not be served on holders of or applicants for licences who are not required to attend.

It is necessary to state in notice of intention to oppose the renewal of a licence (s. 12 of the principal Act) *the grounds* on which the renewal is opposed.

Section 27 repeals part of s. 8 of the Wine and Beerhouse Act, 1869, prohibiting appeal to quarter sessions.

Section 28 substitutes licensing justices as authority instead of Commissioners of Inland Revenue respecting affixing certain notices to premises (s. 11 of principal Act).

Section 29 defines the term "owner" as applied to any person possessing an interest in licensed premises.

Section 30.—No person keeping a house duly licensed shall be liable to any penalty for supplying intoxicating liquors after closing hours to *private friends bonâ fide* entertained by him at his own expense.

Section 31.—An additional retail licence to sell beer for consumption off premises may be granted to the holder of a strong beer dealer's wholesale excise licence (see 43 Vict. c. 6, s. 2).

Definition and Repeal.

Section 32.—The section defines various expressions used in Act. It is amended by s. 313 of Public Health Act, 1875 (*f*) (38 & 39 Vict. c. 55).

"The metropolitan district" means the area mentioned in schedule to Act.

(*f*) The provisions of the Public Health Act are to apply where provisions of former Sanitary Acts are repealed.

"*Town*" means an urban sanitary district as described for the purposes of the Public Health Act, 1872 (now the Act of 1875), etc.; but no urban sanitary district shall be deemed a town unless it contains 1000 inhabitants.

"*Populous place*" means any area with a population of *not less than* 1000, which by reason of the *density* of such population the county licensing committee may by order determine to be a populous place.

The section contains provisions authorizing justices to convene meetings for the purpose of revising orders and specifying populous places.

"Occasional licence" means a licence to sell beer, spirits, or wine, granted in pursuance of 25 & 26 Vict. c. 22, s. 13, and 27 Vict. c. 18, s. 5, and Acts amending same.

"A new licence" means a licence granted at a general annual licensing meeting for premises in respect of which a similar licence has not theretofore been granted.

Section 33.—There are hereby repealed the following sections and parts of sections of the principal Act:—

(1.) Sections 19 to 22, both inclusive, relating to adulteration, and the first schedule to the principal Act;
(2.) Section 24, as to hours of closing;
(3.) Section 35, as to entry on premises by constables;
(4.) So much of ss. 5, 6, 13, 14, 16, 17, and 28, as relates to the records of convictions on licences, and of s. 74 as contains the definition of a town.
(5.) The last paragraph of s. 56.

Provided that the repeal enacted in this Act shall not affect—

(1.) Anything duly done or suffered; or
(2.) Any right or privilege acquired; or
(3.) Any penalty or punishment incurred under any enactment hereby repealed.

SCHEDULE.

Metropolitan District.—The city of London or the liberties thereof, or any parish or place for the time being subject to the jurisdiction of the Metropolitan Board of Works, or within the area contained within a circle the radius of which is four miles from Charing Cross.

BEER DEALERS' RETAIL LICENCES (AMENDMENT) ACT, 1882.

(45 & 46 VICT. c. 34.)

An Act to amend the Beer Dealers' Retail Licences Act, 1880 (43 *Vict. c.* 6). [10th August, 1882.]

Notwithstanding anything in s. 8 of the Wine and Beerhouse Act, 1869, or in any other Act now in force, licensing justices shall be at liberty IN THEIR FREE AND UNQUALIFIED DISCRETION either to refuse or grant certificates for any licences for sale of beer by retail to be consumed off the premises, on any grounds appearing to them sufficient. See also p. 242.

[The provisions of above section are similar to those contained in 43 Vict. c. 6, except that they apply to *any* licence for the sale of beer to be consumed off the premises.]

Section 2.—Certificates can be granted at general annual licensing meetings only.

Section 3.—Short title of Act, etc.

III.—Indictable Offences and Summary Jurisdiction Acts.

INDICTABLE OFFENCES ACT, 1848.

(11 & 12 Vict. c. 42.)

This Act, which with the Summary Jurisdiction Act of the same year are generally known as "Jervis's Acts" contains a complete code of the procedure to be taken by justices of the peace in the case of persons committing indictable offences.

Section 1 empowers a justice on complaint made to issue warrant for apprehension of any person within his jurisdiction committing any indictable offence. A summons may issue in the first instance.

Section 2.—*Re* warrants for offences on high seas.

Section 3.—Issue of warrant on production of certificate of indictment.

Section 4.—Power to issue warrants on Sundays.

Section 5.—Justices for adjoining counties may act for one county while residing in another, and the acts of any constable in obedience thereto shall be valid.

Section 6.—As to jurisdiction of justices and constables in place of exclusive jurisdiction.

Section 8.—When a charge for an indictable offence is made, information on oath must be laid before warrant issue; but if summons issue information need not be on oath.

Section 9.—**Summons.**—Upon complaint being laid, justices receiving the same may issue a summons directed to the party charged, or a warrant for his appearance: and every such summons shall be served by a constable or other peace officer upon the person to whom it is so directed by delivering it to him *personally*, or if he cannot conveniently be met with, then by leaving it with some person for him *at his last or most usual place of abode*; and the constable serving shall attend at the time and place and before the justices in the said summons mentioned, to prove service. If the party summoned do not attend, justice may issue warrant to compel attendance.

Section 10.—A warrant must be directed to the constable or constables of the district, either by name or generally, and describe briefly the offence and the offender. It remains in force until it is executed by any constable within the district for which it is granted.

Section 11.—**Backing warrants.**—Contains regulations as to the backing of warrants by endorsement into other jurisdictions: and such endorsement shall be sufficient authority to execute the same within the jurisdiction for which endorsed.

Section 16 gives power to justices to summon witnesses to attend and give evidence, and to issue a warrant if the summons is disobeyed.

Sections 17 and 18 are as to trial and examination of witnesses, taking of depositions, etc.

Section 19.—The room in which the justices shall take such examinations *shall not be deemed an open court*, and they may order that no person shall remain in the room.

Section 20 gives power to justices to bind over the prosecutors and witnesses by recognizance (see s. 42 Summary Jurisdiction Act, 1879).

Section 21.—**Remand.**—The justices may remand the accused if for less than eight days by warrant, or for *three days verbally*, and may bail the accused if they think fit.

Section 22.—As to examination of accused and expenses of conveyance, arrest, etc.

Section 23.—**Bail.**—Gives power to justices to admit to bail persons charged with felony and certain misdemeanors, namely:—Obtaining property by false pretences; receiving stolen property; perjury; concealing the birth of a child; indecent exposure of the person; riot; assault in pursuance of a conspiracy; assault upon peace officer; neglect of duty as a peace officer; any misdemeanor for which the costs may be allowed out of the county rate. Justices may also admit to bail after commitment for trial. Justices must admit to bail persons charged with other misdemeanors. No bail in case of treason.

Section 26.—**Commitment.**—The constable or persons to whom the warrant of commitment shall be directed shall convey the accused to prison mentioned in such warrant, and there deliver him, together with the warrant, to the keeper or governor of such gaol or prison, who shall thereupon give such constable a *receipt for such prisoner*, setting forth the state and condition in which such prisoner was when he was delivered into his custody: and the justices may ascertain the sum which ought to be paid to such constable for conveying the prisoner to such gaol or prison, and also his expenses in returning, and shall make an order upon the treasurer of such county or place (in Middlesex, on overseers), for payment to such constable or other person of the sums so ascertained to be payable; and the said treasurer shall pay the amount ordered. If committing justices think prisoner has money enough to defray expense, they may order money to be so applied.

Section 27.—The defendant to have copies of depositions.

Section 29.—Metropolitan police magistrates and stipendiary magistrates may act alone.

The schedule to Act contains forms of informations, warrants, summonses, depositions, recognizances, etc.

SUMMARY JURISDICTION ACT, 1848.
(11 & 12 VICT. C. 43.)

SUMMONS AND WARRANT.

Section 1.—Justices are empowered to *issue summons* requiring appearance of person charged with any offence who may be within jurisdiction of justice.

Every such summons shall be served by a constable or other person to whom the same shall be delivered, upon the person to whom it is directed, by delivering it to him *personally*, or by leaving it with some person for him at his last or most usual place of abode; and the constable or person who shall serve it shall attend at the time and place in the summons mentioned, to depose to service of same.

Section 2.—If the person so served fails to appear, due service of summons is proved, then the justices may issue a warrant to apprehend, or a warrant may issue in first instance.

Section 3.—**Warrants.**—Every such warrant shall be under the hand and seal of the justice or justices issuing it, and may be directed to any constable

by name, or generally to all the constables within the county or district. The *warrant shall remain in full force until it shall be executed*, and such warrant may be executed by apprehending the defendant at any place within the jurisdiction of justices issuing same, or, in case of fresh pursuit, at any place within seven miles of the border of district without having such warrant backed. [Clause as to extension of authority where warrant is generally directed.] Certain provisions of 11 & 12 Vict. c. 42, as to backing of warrants, are to extend to warrants issued under this Act.

Section 4.—As to description in information or complaint of property belonging to partners or corporations.

Section 5.—Persons aiding or abetting in offences punishable summarily may be treated as principals.

Section 6.—The provisions of 11 & 12 Vict. c. 42 (justices in one county acting for another) are to extend to this Act.

By s. 7, witnesses may be summoned or warrant issued to compel attendance. Persons refusing to be examined may be committed for seven days.

Section 8.—Complaints for an order need not be in writing.

Section 9.—Proceedings upon informations, etc.

Section 10.—Complaint and information (*re* offences tried summarily) may be made or laid without oath or affirmation, except where warrant issued in first instance.

Section 11.—The time is limited for such complaint or information to six months from the time when the matter arose.

The Hearing.

Section 12.—Every such complaint and information shall be tried by one or two or more justice or justices of the peace. The room or place in which such justice or justices shall sit shall be deemed an open and public court, to which the public generally may have access, so far as it can contain them. Parties are allowed to plead and cross-examine by counsel or attorney.

Section 13.—As to proceedings in case of non-appearance of parties.

Section 14.—As to procedure upon hearing of a complaint or information.

Section 15.—Prosecutors and complainants are competent witnesses, if they have no pecuniary interest in the result.

Section 16.—Justices can adjourn the hearing and commit defendant, or suffer him to go at large, or discharge him upon his own recognizance.

Section 17 provides for a copy of an order being given to defendant before a warrant is issued.

Section 18.—Justices may award costs, which shall be specified in conviction or order of dismissal, and may be recovered by distress.

Warrant of Distress.

Section 19.—Where a conviction adjudges a pecuniary penalty to be paid or an order requires the payment of a sum of money, the justices may issue a warrant of distress in writing under hand and seal of justice, and if after delivery of same to the constable to whom directed, *sufficient distress shall not be found*, then (upon proof of signature), any justice can sign an endorsement on such warrant authorizing its execution within his jurisdiction, and the sum shall be levied by distress and sale of the goods and chattels of the defendant. But see s. 43 of Summary Jurisdiction Act, 1879.

Section 20.—The justice, after issuing warrant, may suffer defendant to go at large, or order him into custody until return be made.

Section 21.—If the constable who shall have had the execution of warrant shall return that he could find no goods or chattels, or no sufficient goods or chattels, the justice may issue a *warrant of commitment* directed to the same or any other constable, requiring the constable to convey the defendant to the house of correction, or to the common gaol, and there deliver him to the keeper, who is required to receive and imprison him, or to imprison him and keep him to hard labour, as shall have been directed by statute on which conviction or order was founded, unless the sums adjudged to be paid, with any other charges authorized by justice, shall be sooner paid.

Section 22.—In all cases of penalties, convictions, or orders, where the statute provides no remedy in default of distress, justice may commit defendant to prison for not more than three months.

Commitment.

Section 23.—Where the statute makes no provision for distress, but directs that if the penalty be not paid, the defendant shall be imprisoned, the sum shall not be levied by distress; but if the defendant do not pay, the justices may issue a warrant requiring the constable to take the defendant to the house of correction or common gaol for the place, and to deliver him to the keeper, and requiring the keeper to receive and imprison him for such time as the statute shall direct, unless the sum, costs, and charges shall be sooner paid.

Section 24 gives power to justices to commit where the conviction is not for a penalty nor the order for payment of money, and the punishment is by imprisonment, and in such cases *the costs* may be levied by distress, and in default defendant may be committed for a further term.

Section 25.—Where justices shall, upon information or complaint, adjudge the defendant to be imprisoned, *and he shall then be in prison* for any other offence, the warrant shall be delivered to the gaoler and imprisonment for the subsequent offence can commence at the expiration of the imprisonment to which the defendant shall have been previously sentenced.

Section 26 provides for recovering costs from the prosecutor by distress or imprisonment if the information be dismissed.

Section 27.—As to procedure after an appeal has been heard and dismissed and as to recovery of costs of such appeal.

Payment of Penalty.

Section 28.—Where any person against whom a warrant of distress shall issue shall pay or tender to the constable the sum or sums mentioned in such warrant, together with amount of expenses, such constable shall cease to execute warrant; and where any person is imprisoned for non-payment of any sum he may pay same to the keeper of the prison together with amount of expenses (if any), and the keeper shall *thereupon discharge him* if he be in his custody for no other matter.

Section 29.—In cases of summary proceedings *one justice* may issue summons or warrant, and after conviction or order may issue warrant of distress, even where by statute two justices must try the matter, but in such case the two must be present throughout the hearing.

Section 30.—As to payment of clerks' fees.

Section 31.—Penalties levied under warrants of distress shall be paid to the clerk of the division in which the justices usually act: and all sums so received by the clerk shall forthwith be paid by him to the parties entitled thereto according to the directions of the statute applicable to the case, and if there are no such directions, then to the treasurer of the place for which

such justices acted: and every clerk and gaoler shall keep and return an exact account of all moneys so received.

Section 32 legalises the forms in the schedule.

Section 33.—Metropolitan police magistrates and stipendiary magistrates in other places may act alone.

Section 34 makes a similar provision as to the Lord Mayor or any alderman of London.

Section 35.—The Act *does not extend* to any warrant or order for the removal of a poor person chargeable to any place; nor to orders as to lunatics, or their expenses; nor to revenue, stamps, taxes, or post office; nor to warrants in matters of bastardy except as to the backing of same, levying of sums ordered, or imprisonment of defendant for non-payment. See Summary Jurisdiction Act, 1879, s. 54.

Section 36 is a repealing clause.

Section 37.—Act does not extend to Scotland or Ireland, except as to backing of warrants.

Schedule to Act contains forms of warrants, recognizances, etc.

SUMMARY JURISDICTION ACT, 1879.

(42 & 43 Vict. c. 49.)

An Act to amend the Law relating to the Summary Jurisdiction of Magistrates. [11th August, 1879.]

Section 1.—This Act may be cited as the Summary Jurisdiction Act, 1879.

Section 2.—The Act shall not extend to Scotland or Ireland.

Section 3.—Commencement of Act, January 1st, 1880. The section provides for the making of any necessary preliminary rules.

PART I.

Court of Summary Jurisdiction.

Section 4.—Where the court has power to punish by fine or imprisonment, the court may reduce the term of imprisonment or the amount of fine imposed under any Act for a first offence: or may in lieu of imprisonment impose a fine not exceeding 25*l*.

Section 5.—The *period of imprisonment* imposed in default under this or any other Act shall be such as the court think will satisfy the justice of the case, but shall not exceed the maximum fixed by the following scale (*g*), viz.:

Where amount adjudged to be paid by conviction, as ascertained by the conviction,	The period shall not exceed
Does not exceed 10*s*.	7 days.
Exceeds 10*s*. but does not exceed 20*s*.	14 days.
Exceeds 1*l*. but does not exceed 5*l*.	1 month.
Exceeds 5*l*. but does not exceed 20*l*.	2 months.
Exceeds 20*l*.	3 months.

Such imprisonment shall be without hard labour, except the same be authorized, in which case the imprisonment may, if the court thinks fit, be with hard labour.

(*g*) The Act repeals the Small Penalties Act, 1865.

Section 6.—Where a sum of money claimed as due is recoverable on complaint to a court of summary jurisdiction, and not on information, such sum shall be deemed a civil debt, and if recovered by summary order shall be recovered as a civil debt is recoverable under this Act (*h*).

Section 7.—A court of summary jurisdiction, by whose order, etc., any sum is adjudged to be paid, may—

(1.) Allow *time for the payment* ;

(2.) Direct payment to be made by instalments ;

(3.) Accept satisfactory security, with or without sureties, for payment.

If default be made in the payment of any instalment, proceedings may be taken as if default had been made in payment of all instalments.

A court directing the payment of any sum may specify when, where, and to whom it shall be paid, the person receiving same to pay over to clerk of court.

Section 8.—Where a fine does not exceed 5*s*., then, except so far as the court may expressly order otherwise, an order shall not be made for payment of any costs ; and the court shall, except they expressly order otherwise, direct all fees payable by informant to be remitted ; the court may also order the fine to be paid to the informant towards payment of costs.

Section 9.—(1.) A court of summary jurisdiction may declare a recognizance forfeited, and may enforce payment of any sum due thereunder.

The section contains a proviso regarding power of court to cancel or mitigate forfeiture under certain circumstances.

(2.) A court of summary jurisdiction may forfeit a recognizance to keep peace, upon proof of the conviction of the person bound of any offence which is a breach of the condition of the same, and adjudge the persons bound thereby to pay the sums for which they are bound.

(3.) Except where a person by notice in writing, requires such recognizance to be transmitted to a court of general or quarter sessions, the recognizances to which this section applies shall be dealt with as in this section mentioned.

(4.) All sums paid in respect of a recognizance forfeited shall be paid to the clerk of the court.

Section 10.—**Children.**—(1.) Where a child (*i*) is charged before court with any indictable offence other than homicide, if the parent or guardian of the child does not object, the court may deal summarily with the offence, inflicting the same punishment as on indictment :

Provided that—

(*a*.) Imprisonment shall be substituted for penal servitude ;

(*b*.) The imprisonment not to exceed one month ;

(*c*.) When a fine is awarded, it is not to exceed 40*s*. ;

(*d*.) **Whipping.**—When the child is a male the court may adjudge the child to be privately whipped with not more than six strokes of a birch rod *by a constable, in presence of an inspector* or other officer of police of higher rank than a constable, and, if he desires to be present, of the parent or guardian of the child.

(2.) For the purposes of this section, the court may, during the hearing of the case, have the charge reduced into writing and read to the parent or guardian of the child, who may then be asked, "Do you desire the child

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(*h*) See s. 35 of Act.

(*i*) See s. 49 of Act.

to be tried by a jury, and object to the case being dealt with summarily?" the court explaining the meaning thereof.

(3.) The court may remand a child for purpose of procuring attendance of parents at hearing of charge.

(4.) This section shall not prejudice the right of the court to send a child to a reformatory or industrial school.

(5.) This section shall not render punishable a child who is not above the age of seven years and of sufficient capacity to commit crime.

Section 11.—**Juvenile offenders.**—(1.) Where a young person (*k*) is charged with any indictable offence specified in schedule to Act (*l*), the court, if the young person consents, may deal summarily with the offence, inflicting a fine not exceeding 10*l*., or imprisonment not exceeding three months. Males under age of fourteen may be whipped privately with twelve strokes of a birch rod. (See s. 10, sub-s. (1).)

(2.) The court may have the charge reduced into writing and read to the accused, who may then be asked, "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?"

(3.) This section shall not prejudice the right of the court to send a young person to a reformatory or an industrial school.

Adults.

Section 12.—Where a person who is an adult (*k*) is charged with any indictable offence specified in schedule to Act (*m*), the court, if they think it expedient from all the circumstances of the case, and if the person charged consents, may deal summarily with the offence. Punishment, imprisonment three months, or a fine not exceeding 20*l*.

The court may have the charge reduced into writing and read to the accused, who may then be asked, "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?"

Section 13.—(1.) Where a person who is an adult is charged with any indictable offence specified in first column of first schedule to the Act, and not comprised in the second column, if the court during the hearing are satisfied that there is sufficient evidence to put the accused on his trial, and further are satisfied, from all the circumstances of the case, that it may properly be dealt with summarily and adequately punished under this Act, then the court shall cause the charge to be reduced into writing and read to the accused, and if he pleads guilty he may be sentenced to six months' imprisonment with hard labour.

(2.) The court, before asking the person charged whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he pleads guilty he will be dealt with summarily, and that if he does not plead or answer, or pleads not guilty, he will be dealt with in the usual course. The court shall further state to such person to the effect that he is not obliged to say anything unless he desires to do so, but that whatever he says will be taken down in writing, and may be given in evidence against him upon his trial, and shall give him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatever he then says

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(*k*) See s. 49 of Act. (*l*) First column first schedule.

(*m*) Second column first schedule.

may be given in evidence against him upon his trial, notwithstanding such promise or threat.

(3.) If the prisoner does not plead guilty, whatever he says in answer shall be taken down in writing and read over to him, and kept with the depositions of the witnesses, and transmitted with them in manner required by law, and may, if necessary, be given in evidence against him.

Section 14.—Where an adult is charged before a court with any indictable offence specified in first schedule to Act, and it appears that *owing to a previous conviction* the accused is punishable with penal servitude, the court shall not deal summarily with such case.

Section 15.—A child on summary conviction for an offence shall not be imprisoned for longer than one month nor fined more than 40*s*.

Section 16. If upon the hearing of a charge for an offence the court think that the offence is of a trifling nature, and that a nominal punishment will suffice,

(1.) The court may dismiss the information, and may order the accused to pay damages up to 40*s*. and costs ; or

(2.) The court upon convicting the person may discharge him conditionally on his giving security to appear for sentence when called upon.

But this section shall not apply to an adult convicted on his own plea of guilty to an offence of which he could not be convicted by court had he not pleaded guilty.

Section 17.—(1.) A person charged before a court with an offence punishable with three months' imprisonment, and which is not an assault, may, before the charge is gone into but not afterwards, *claim to be tried by a jury*, and the court shall deal with the case as with an indictable offence.

(2.) For the purpose of informing the defendant of his right to be tried by a jury, the court shall, before going into the charge, address him as follows :—"You are charged with an offence in respect of the commission of which you are entitled, if you desire it, instead of being dealt with summarily, to be tried by a jury. Do you desire to be tried by a jury ?"

(3.) If the defendant be a child, the court shall address the above question to the parent or guardian if present.

Section 18.—No *cumulative sentence* of imprisonment (save as regards sureties) for several assaults on same occasion shall exceed six months.

Section 19.—**Appeal.**—Where any person is sentenced to imprisonment without option of fine for any offence, a right of appeal to quarter sessions is allowed, provided the defendant did not plead guilty, etc.

Section 20.—**Open Court.** Cases arising under this or other Acts shall not be heard, tried, etc., by a court of summary jurisdiction, except when sitting *in open court*.

(2.) "Open court" means a petty sessional court-house or an occasional court-house.

(3.) A "petty sessional court-house" means a court-house or place where justices usually assemble for special or petty sessions, or a temporary substitute for such.

(4.) An "occasional court-house" means such police station or other place as is appointed (as hereinafter provided) to be used as an occasional court-house.

(5.) Justices shall, from time to time, appoint places to be used as "occasional court-houses," at which cases may be heard, tried, etc.

(6.) A court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house is in this Act referred to as a petty sessional court.

(7.) No court of summary jurisdiction sitting in an occasional court-house shall sentence an offender to a longer term of imprisonment than fourteen days, nor to a fine exceeding 20*s.*, and the same power is only given to a justice sitting alone in a *petty sessional court-house*.

(8.) Indictable offences dealt with summarily under the Act shall not be heard, tried, etc., except by a petty sessional court sitting on some day appointed for hearing such offences, or at some adjournment of such court.

(9.) As to offences and cases under any future Act.

(10.) The Lord Mayor or any alderman of London, and any *police or stipendiary magistrate*, when authorized to do alone any act authorized to be done by more than one justice, shall be deemed to be a court of summary jurisdiction consisting of two or more justices.

(11.) A court of summary jurisdiction, when not a petty sessional court, may adjourn the hearing of any case to a petty sessional court. See s. 16 Summary Jurisdiction Act, 1848.

Section 21.—**Warrants.**—(1.) Where application is made to a court of summary jurisdiction for a distress warrant (*n*) or warrant of commitment for non-payment of money, etc., the court may postpone the issue of such warrant until such time and on such conditions as may seem just.

(2.) The *wearing apparel and bedding* of a person and his family, and the *tools and implements* of his trade to value of 5*l.*, shall not be taken under a distress.

(3.) Where, on non-payment of money, application is made for distress warrant, and it appears to the court that the person has no goods whereon to levy distress, or that his goods will be insufficient to satisfy the money payable by him, or that levy of distress will be more injurious to him or his family than imprisonment, such court may order such person to be imprisoned for period for which he is liable in default under the order.

(4.) Where in default of sufficient distress, a warrant of commitment is applied for, and it appears to the court to whom the application is made, that part of the sum adjudged, either by payment of instalments or otherwise, has been reduced, the court shall, under certain conditions, revoke and alter term of imprisonment.

Supplemental Provisions.

Section 22.—The section provides for the keeping of a register of proceedings of court.

Section 23.—As to securities taken in pursuance of Act. See also s. 35.

Section 24.—The section gives power to remand persons charged with indictable offences with which court has power to deal. A remand may be made as under s. 21 of 11 & 12 Vict. c. 42; but if the person be remanded to the next practicable sitting of a petty sessional court he may be remanded *for more than eight days*.

Section 25 sets forth the procedure in case of sureties to keep the peace, with the maximum imprisonment in default. Six months.

Section 26.—Where a person has been committed to prison for default in finding sureties, upon new evidence or proof of change of circumstances the court may reduce the amount of bond or dispense with sureties.

(*n*) See s. 43, *post*.

Section 27.—The section contains regulations applicable to indictable offences. See also ss. 10—13.

Section 28.—As to manner in which the costs of prosecution of indictable offences dealt with summarily are to be defrayed. The court may grant a certificate of amount of compensation for expenses, loss of time, etc., to any person prosecuting or giving evidence in the case.

Section 29.—(1.) The Lord Chancellor can make rules (*o*) regarding—

(*a.*) The giving security under Act;

(*b.*) The forms to be used under the Summary Jurisdiction Acts;

(*c.*) The costs and charges payable under distress warrants;

(*d.*) Adapting to the provisions of this Act and Summary Jurisdiction Act of 1848, procedure under former Acts;

(*e.*) Forms of accounts to be rendered by clerks of courts;

(*f.*) Any other matter in relation to which rules are authorized or required to be made.

(2.) The Lord Chancellor may annul, alter, or add to forms contained in Act, 1848, etc.

(3.) Rules made to be laid before Parliament.

Section 30.—The section gives power to justices to provide court-houses, and erect buildings (*p*).

PART II.

Amendment of Procedure.

Section 31.—As to procedure on Appeal, which is to be subject to the following conditions and regulations:—

(1.) Appeal to be made to proper court of general or quarter sessions.

(2.) Notice in writing of intention to appeal, to be duly served by appellant on other party and on clerk of court.

(3.) Appellant to enter into recognizance, or give security to appear and try appeal.

(4.) Where the appellant is in custody, the court may release him on his entering into recognizance or security aforesaid.

(5.) Power of Court of Appeal to adjourn hearing, or to confirm, reverse, or modify decision.

(6.) Memorandum of decision of Court of Appeal to be sent to clerk of lower court.

(7.) A "notice in writing" as required in this section shall be in writing, and signed by the appellant or his agent. It may be transmitted by post as a registered letter.

Section 32 is repealed by Act of 1884.

Section 33.—(1.) Any person aggrieved who desires to question a conviction, as *erroneous in law*, may apply to the court to state a *special case* and in case of refusal may apply to the High Court of Justice.

(2.) The application shall be made and the case stated as directed by rules under this Act, and the same case shall be heard, etc., as prescribed by rules made in pursuance of the Supreme Court of Judicature Act, 1875. The Act 20 & 21 Vict. c. 43, is also applicable.

Section 34.—(1.) Where a power is given by any future Act to a court of requiring any person to do or abstain from doing any act or thing (other

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(*o*) See p. 394, *post*.

(*p*) Powers for the purpose are given under 38 & 39 Vict. c. 89, s. 40, and 31 Vict. c. 22, ss. 4 and 5.

than payment of money), and no mode is prescribed of enforcing such requisition, the court may exercise such power by an order or orders, annexing such conditions as may seem just.

(2.) A person making default in complying with such order shall be punished in the prescribed manner, or may be ordered to pay a sum (enforceable as a civil debt) not exceeding 1*l.* for every day during which he is in default, or to be imprisoned.

Section 35.—Any sum declared *a civil debt* shall be deemed a sum for payment of which the court has authority to make an order on complaint in pursuance of the Summary Jurisdiction Acts.

(1.) But no warrant for arrest of person failing to appear to answer such complaint shall be issued ;

(2.) Nor shall an order for payment be enforced by imprisonment, unless the court are satisfied that the person making default has or has had the means to pay, and has neglected to do so.

Proof of the means of the person making default may be given in such manner as court think just.

Section 36.—A court of summary jurisdiction may issue a *summons* to a witness beyond the jurisdiction of such court, and any court for the county, borough, or place in which the witness is, may, on proof of the signature to summons, endorse the same, and the witness must obey the summons, and in default may be apprehended.

Section 37.—**Validity of warrant.**—A warrant or summons issued by a justice of the peace under the Summary Jurisdiction Act, 1848, or any other Act, whether past or future, shall not be avoided by *reason of the justice who signed the same dying* or ceasing to hold office.

Section 38.—A person taken into custody without a warrant shall be brought before a court of summary jurisdiction as soon as practicable after he is so taken, and if it is not or will not be practicable to bring him before a court *within twenty-four hours a superintendent or inspector of police* or other officer of police of equal or superior rank, or in charge of any police station, shall inquire into the case, and, except where the offence appears to such superintendent, inspector, or officer *to be of a serious nature*, shall discharge the prisoner upon recognizance, with or without sureties.

Sections 39.—The section contains various enactments applicable to proceedings before courts of summary jurisdiction, viz :—

(1.) The description of offence in words of Acts, or in similar words, shall be sufficient in law ;

(2.) Any exception, exemption, proviso, etc., may be proved by the defendant, but need not be specified or negatived in the information or complaint ;

(3.) Warrant of commitment not to be void through defect, if it be therein alleged that the offender has been convicted, and there is a good and valid conviction or order to sustain the same ;

(4.) Similarly as to warrants of distress.

(5.) All forfeitures not pecuniary (*q*), may be sold or disposed of as the court may direct, and proceeds applied as in case of a fine.

Section 40.—A writ of *certiorari* shall not be required for the removal of any conviction, in relation to which a special case is stated by a court of general or quarter sessions for obtaining the judgment of a superior court.

Section 41.—The service of any summons, process, etc., and the handwriting of any justice or other officer on any warrant, summons, etc.,

(*q*) Goods forfeited for smuggling come under this description.

may be proved by a declaration taken before a justice, or before a commissioner, clerk of the peace, or registrar of county court; and shall be receivable in evidence.

Declarations may be in form provided by rule under this Act.

Section 42.—When a court has fixed the amount of any recognizance, it may be entered into by the parties before any other court, or before the clerk of the court, or before a *superintendent or inspector of police*, or before governor of prison. See note, p. 394.

Procedure in Executing Warrants of Distress.

Section 43.—The following regulations shall apply to warrants of distress issued by a court of summary jurisdiction :—

(1.) Warrant to be executed by or under direction of a constable ;

(2.) Save so far as the person against whom the distress is levied otherwise consents, the distress shall be sold by public auction, five clear days' notice being given, but where *written consent* is given as aforesaid, the sale may be made in accordance therewith ;

(3.) Subject as aforesaid, the distress shall be sold within the period fixed by the warrant, and if no period is so fixed, then within fourteen days from date of distress, unless the amount and charges are sooner paid ;

(4.) Subject to any directions to the contrary given by the warrant, *household goods* shall not (except with written consent) be removed from the house until the day of sale, but so much of the goods *shall be impounded* as are sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark, the defacing or removing of which is punishable by a fine of five pounds ;

(5.) Where a person executing warrant wilfully retains or otherwise exacts any greater costs and charges than those to which entitled, he shall be liable to fine of five pounds ;

(6.) A written account of the costs and charges incurred in the execution of any warrant shall be sent by the constable charged with execution of warrant, to the clerk of the court issuing the warrant ; and the account shall be open to the inspection of the person upon whose goods the distress was levied.

(7.) A constable charged with the execution of a warrant of distress shall cause the distress to be sold, and out of sum realised shall render to owner overplus (if any), after retaining the amount for which the warrant was issued and costs and charges of execution.

(8.) Where a person pays or tenders the sum required under a warrant of distress or produces receipt for same of clerk of court issuing warrant, and also pays amount of costs and charges, the constable shall not execute the warrant.

Prisoner's Property.

Section 44.—A report is to be made *by the police* to a court of summary jurisdiction in cases where property is taken from persons charged with offences punishable on indictment or summarily, and the court has discretionary power as to return of property.

Local Jurisdiction.

Section 45.—Where a person is charged with indictable offence (first schedule to Act) before a court of summary jurisdiction for any county,

borough, or place, and the court have jurisdiction to commit such person for trial in such place, although the offence was not committed therein, and may deal with offence summarily in pursuance of this Act.

Section 46.—For the purposes of the trial of any offence punishable on summary conviction the following provisions shall have effect—

(1.) Where the offence is committed in any water which forms boundary of jurisdiction of two or more courts such offence may be tried by any one of such courts.

(2.) Where offence is committed on boundary of jurisdiction of two or more courts, or within the distance of five hundred yards of any such boundary, such offence may be tried by any one of such courts.

(3.) Where offence is committed in or upon any vehicle, or on board any vessel employed in inland navigation, the accused may be tried by any court of summary jurisdiction through whose jurisdiction such vehicle or vessel passed in the course of the journey or voyage.

(4.) Any offence which is authorized by this section to be tried by any court of summary jurisdiction may be dealt with and punished as if the offence had been wholly committed within the jurisdiction of such court.

PART III.

Definitions, Savings, and Repeal of Acts.

Section 47. The section contains provisions regarding the application of Act to sums leviable by distress, etc. (11 & 12 Vict. c. 43).

Section 48.—As to clerk of court of summary jurisdiction, etc. See also the Justices' Clerks Act, 1877.

Section 49.—Special definitions :—

The expression "child" means a person apparently under the age of twelve years; "young person" means a person between twelve and sixteen years of age; "adult" means a person of the age of sixteen years or upwards :

The expression "person" includes a child, young person, and adult, and also includes a body corporate :

The expression "guardian" in relation to a child, includes any person who has charge of or control over such child.

Section 50.—General definition, titles of Acts, etc.

Section 51.—Application of Summary Jurisdiction Acts to future Acts.

Section 52.—Saving for Army, Navy, etc., Acts.

Section 53.—Application of Acts to Post-office, Revenue, and Customs.

Section 54.—Application and construction of Act.

Repeal.

Section 55.—There shall be repealed :—

(1.) The Acts mentioned in the second schedule to this Act as stated in the third column of schedule.

(2.) So much of any other Act as is inconsistent with this Act.

SCHEDULES.

FIRST SCHEDULE.

INDICTABLE OFFENCES WHICH CAN BE DEALT WITH SUMMARILY UNDER THIS ACT.

FIRST COLUMN. Young Persons consenting and Adults pleading Guilty.	SECOND COLUMN. Adults consenting.
1. Simple larceny.	1. Simple larceny, where property stolen does not exceed 40*s*.
2. Offences declared by any Act to be punishable as simple larceny.	2. Offences punishable as simple larceny, where property stolen, destroyed, etc., does not exceed 40*s*.
3. Larceny from or stealing from the person.	3. Larceny from or stealing from the person, where the value of property exceeds 40*s*.
4. Larceny as a clerk or servant.	4. Larceny as a clerk or servant, where the value of property does not exceed 40*s*.
5. Embezzlement by a clerk or servant.	5. Embezzlement by a clerk or servant, where the value of the property does not exceed 40*s*.
6. Receiving stolen goods, as specified in ss. 91 and 95 of the Larceny Act, 1861, or in either of such sections.	6. Receiving stolen goods, as specified in ss. 91 and 95 of the Larceny Act, 1861, where the value of the property does not exceed 40*s*.
7. Aiding, abetting, or procuring the commission of simple larceny, or of an offence declared to be punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant.	7. Aiding, abetting, or procuring the commission of simple larceny, or of an offence punishable as simple larceny, or of larceny or stealing from the person, or of larceny as a clerk or servant, where the value of the property does not exceed 40*s*.
8. Attempt to commit simple larceny, or an offence declared to be punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant.	8. Attempt to commit simple larceny, or an offence punishable as simple larceny, or to commit larceny from or steal from the person, or to commit larceny as a clerk or servant.

This Act shall apply to any of the following offences when alleged to have been committed by a "young person" in like manner as if such offence were included in the first column of the schedule; that is to say,

(1.) To any offence in relation *to railways* mentioned in ss. 32 and 33 of 24 & 25 Vict. c. 100 (Offences against the Person).

(2.) To any offence relating *to railways* mentioned in s. 35 of 24 & 25 Vict. c. 97 (Malicious Injuries.)

(3.) To any indictable offence under the Post Office Laws; the expression "Post Office Laws" to have the same meaning as in 7 Will. 4 & 1 Vict. c. 36.

SECOND SCHEDULE.

The schedule contains a list of Acts repealed.

The following Acts are wholly repealed:—10 & 11 Vict. c. 82 (Juvenile Offenders); 27 & 28 Vict. c. 80; 28 & 29 Vict. c. 127 (Small Penalties Act).

The following Acts are wholly repealed in so far as relates to England:—13 & 14 Vict. c. 37; 27 & 28 Vict. c. 110; and 18 & 19 Vict. c. 126, except ss. 18, 20, 22, 23, and 24.

Section 2 of 31 & 32 Vict. c. 116, is repealed in so far as it relates to England, as also is section 13 of 34 & 35 Vict. c. 78.

Also 11 & 12 Vict. c. 43, is repealed in s. 35 from the words "nor to any information" to the words "or post office."

RULES.

Rules relating to matters connected with the Act were made December 12th, 1879. See s. 29, p. 389.

NOTE.—The governor of a prison is not required to take the recognizance of any person proposed as surety unless such person can produce a written certificate from a court of summary jurisdiction, or its clerk, that he is able to pay the amount for which he is to be bound (s. 42, p. 391).

SUMMARY JURISDICTION (PROCESS) ACT, 1881.

(44 & 45 VICT. C. 24.)

This Act amends the Law respecting Service of Process.

Sections 4, 5, and 6 deal with service of process of English court in Scotland, and of Scotch court in England, execution of process, provisions as to bastardy proceedings in England and Scotland, etc.

Section 8 defines expressions used in Act.

The "endorsement in backing a process" is given in schedule to Act.

SUMMARY JURISDICTION ACT, 1884.

Section 3 of Act repeals obsolete punishments.

Section 4 repeals certain Acts mentioned in schedule, so far as to bring them into conformity with Summary Jurisdiction Acts.

Sections 5 to 12 are explanatory of certain matters referred to in former Acts.

IV.—Police (England) Acts, 1839 to 1893. (*r*)

COUNTY POLICE ACT, 1839.

(2 & 3 Vict. c. 93.)

An Act for the Establishment of County and District Constables by the Authority of Justices of the Peace. [27th August, 1839.]

The first two sections (*s*) set forth the preliminary steps to be taken for the establishment of police forces in counties.

Section 3 enacts that in the first instance certain rules (*t*) shall be made by the Secretary of State, and such rules may be amended or added to, and copies thereof shall be laid before Parliament.

Appointment of chief constable.—Section 4.—The justices of the county (*u*) in general or quarter sessions assembled (*now standing joint committee*), shall, subject to the approval of the Secretary of State, appoint a person duly qualified according to the rules to be chief constable of the county, and in every case of vacancy of the office shall, subject to the like approval, appoint another fit person in his room; and every chief constable so to be appointed may hold his office until dismissed by the justices in general or quarter sessions assembled, or at any adjournment thereof: Provided always, that when any county shall have been divided for the purpose of returning members to serve in Parliament for each division, it shall be lawful to appoint two chief constables for such county, if the justices of such county shall think fit (*x*). Provided also, that it shall be lawful to appoint the same chief constable for two or more adjoining counties or part of counties, if the justices of such counties in general or quarter sessions assembled (now standing joint committee) shall mutually agree to join in such appointment (*y*).

Notices.—Section 5 (*z*).—As to notice of proceedings under Act being given by clerk of peace on requisition of five justices.

Appointment of petty constables, etc.—Section 6.—Subject to the approval of two or more of the justices of the county in petty sessions

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(*r*) A list of these Acts is given in schedule to Police Act, 1890, *post*.

(*s*) The provision in s. 1 that only one constable be appointed for every 1000 inhabitants, is now repealed by the Statute Law Revision Act, 1874 (No. 2).

(*t*) For rules referred to see heading "Qualifications" (p. 406), dated April 12th, 1886, *post*. The section of the Act is in part repealed by the Statute Law Revision Act, 1874 (No. 2).

(*u*) By the provisions of the Local Government Act, 1888, these powers of quarter session and justices with respect to county police are transferred to the standing joint committee appointed for county.

(*x*) As to incidence of "rating," see Police Act, 1840, *post*.

(*y*) See Police Act, 1857, p. 404, *post*.

(*z*) In part repealed by Statute Law Revision Act, 1874 (No. 2).

assembled, the chief constable shall appoint the other constables to be appointed for the county, and a superintendent (*a*) to be at the head of the constables in each division of the county, and at his pleasure may dismiss all or any of them, and shall have the general disposition and government of all the constables so to be appointed, subject to such lawful orders as he may receive from the justices in general or quarter sessions assembled (now standing joint committee), and to the rules established for the government of the force.

Appointment of officer to act as "deputy."—Section 7. — The chief constable shall, subject to the approval of the justices in general or quarter sessions assembled (now standing joint committee), appoint one of the superintendents (*b*) to act as his deputy in case of his being incapable, from illness or necessary absence from the county, to perform the duties of chief constable of the county; and the deputy so appointed shall in such case as aforesaid, and also in case of any vacancy of the office of chief constable by death or otherwise, have all the powers, privileges, and duties of the chief constable: Provided always, that no deputy chief constable shall be capable of continuing to act with the powers of chief constable *during any vacancy of the office* for more than three calendar months after the vacancy has been occasioned.

Authority as constable.—Section 8.—The chief constable and other persons so appointed shall be sworn as constables before a justice of the county, and shall have all the powers, privileges, and duties throughout the county, and also in all liberties and franchises and detached parts of other counties locally situated within such county, and also in any county adjoining to the county for which they are appointed, which any constable duly appointed has within his constablewick by virtue of the common law, or of any statute (*c*) made or to be made.

Voting.—Section 9 (Voting at elections) is now repealed in part, the police having acquired right to vote by Acts passed in 1887 and 1893.

Other Employment, etc.—Section 10.—Chief or other constables are restrained from employing themselves in any office or employment for hire or gain, and they are exempt from serving upon juries or inquests or in militia.

Section 11, regarding "Half-pay," is repealed by 50 & 51 Vict. c. 67.

Penalty for neglect of duty.—Section 12.—Constables who shall be guilty of neglect or violation of duty shall, on conviction, be liable to a penalty of 10*l.*, deductable from salary due, or the offender may be imprisoned for one calendar month.

Section 13. — This section is repealed by Police Act, 1859, s. 4 (Resignation).

Accoutrements, delivery of.—Section 14.—Every constable who shall be dismissed from or shall cease to hold office, and who shall not forthwith deliver over all the clothing, accoutrements, appointments, etc., which may have been supplied to him to the chief constable, superintendent, or other

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(*a*) Varied by s. 26 of Police Act, 1840.

(*b*) See also s. 26 of Police Act, 1840, p. 400.

(*c*) Provisions of 1 & 2 Will. 4, c. 41 (Special Constables) are applicable.

officer appointed to receive them, shall be liable, on conviction before justices, to imprisonment for one month, and warrant may issue for search and seizure of such clothing, accoutrements, etc.

Assuming dress of constable, etc.—Section 15.—Every person, not being a constable appointed under this Act, who shall be in unlawful possession of police clothing or appointments, or who shall put on the dress, or take the name, designation, or character of any constable, *for the purpose* of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which such person would not be entitled to do of his own authority, or for any other unlawful purpose, shall be liable, on conviction before justices, to a penalty of 10*l.* in addition to any other punishment to which he may be liable.

Publicans harbouring police.—Section 16.—A penalty of 5*l.* is imposed upon any publican, beerhouse keeper, etc., who shall knowingly harbour or entertain any constable during time appointed for his being on duty.

Quarter and petty sessions.—Section 17.—Every chief constable, unless prevented by sufficient cause, shall attend every general and quarter sessions of the justices of the county, and every adjournment thereof, and shall make quarterly reports to the justices of all matters which they shall require of him concerning the police of the county, and shall obey all lawful orders and warrants of the said justices in the execution of his duty; and the superintendents of divisions shall in like manner attend every sessions of the justices holden for their respective divisions, and shall make the like reports to the justices of such divisions.

Extraordinary expenses.—Section 18 provides that in addition to the salary to be paid to the chief constable, reasonable allowances shall be made to him for extraordinary expenses necessarily incurred by him, and by the constables under his orders, in the apprehension of offenders, and in the execution of duty.

Section 19 (constables for separate divisions) is now repealed.

Section 20, regarding payment of salaries and police expenses out of county rate, is now altered by s. 3 of 3 & 4 Vict. c. 88, providing police rate.

Sections 21 and 22 are repealed.

Section 23, as to rates, accounts, etc., repealed in part by Statute Law Revision Act, 1874 (No. 2).

Borough towns (exemption).—Section 24 provides that nothing in this Act contained shall extend to authorize the justices of any county to appoint constables within any borough incorporated under the provisions of 5 & 6 Will. 4, c. 76 (Municipal Corporations Act), or of any charter granted in pursuance of that Act; nor shall such boroughs having a separate court of quarter sessions be liable to contribute to the expenses of this Act. The section is amended by 45 & 46 Vict. c. 50, s. 242.

Section 25 provides for the discontinuance of constables under local and other Acts where this Act is in operation. A proviso enacts that nothing contained in the section shall prevent or invalidate the appointment of parochial constables. The section is in part repealed by Statute Law Revision Act, 1874 (No. 2).

Section 26 repealed.

Liberties, etc., to form parts of counties for purposes of Act.—Section 27 enacts that for the purposes of Act all detached parts of counties, and also all liberties and franchises (other than incorporated

boroughs), shall be considered as forming part of that county by which they are surrounded, or as forming part of that county with which they have the largest common boundary. The section provides for detached parts of counties which are not themselves an entire hundred, wapentake, ward, rape, lathe, etc.

Section 28.—Interpretation clause.

COUNTY POLICE ACT, 1840.

(3 & 4 VICT. c. 88.)

An Act to amend the Police Act, 1839 (2 & 3 Vict. c. 93).

[7th August, 1840.]

Exemption from toll.—Section 1.—No toll shall be taken on any turnpike road or bridge for any horse, carriage, or cart in the service of the police: provided that the constable in charge (if not the chief constable) shall produce an order in writing under the hand of the chief constable, or shall have his dress according to regulation.

Outlying districts.—Section 2 (*d*).—As to detached parts of counties and transference of outlying districts.

Police rate.—Section 3 authorizes the making of a police rate.

Section 4 defines how rateable property is to be valued.

Section 5, as to levying of police and county rates.

Sections 6, 7, 8, and 9 contain further provisions regarding police rates.

Superannuation.—Section 10 (superannuation) is repealed by the Police Act, 1890, as is also s. 11 (rate of superannuation) (*e*).

Station houses and strong rooms.—(*f*) —Section 12.—It shall be lawful for the justices in quarter sessions assembled (now standing joint committee) of any county if they think fit, to order that station houses or strong rooms, for the temporary confinement of persons taken into custody by the police, be provided upon plans as approved by Secretary of State, and

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(*d*) See also 7 & 8 Vict. c. 61, and 21 & 22 Vict. c. 68.

(*e*) (Former "superannuation" scale). The provisions of this section were as follows: It shall be lawful for the justices, upon such recommendation (viz., that of chief constable), if they shall think fit, to order that any of the said constables may be superannuated, and receive thereupon out of the superannuation fund a yearly allowance, subject to the following conditions, and not exceeding the following proportions: (that is to say,) that if he shall have served with diligence and fidelity for fifteen years and less than twenty years, an annual sum not more than half his pay; if for twenty years or upwards, an annual sum not more than two-thirds of his pay; provided that if he shall be under sixty years of age it shall not be lawful to grant any such allowance unless upon the certificate of the chief constable that he is incapable, from infirmity of mind or body, to discharge the duties of his office; provided also that if any constable shall be disabled from any wound or injury received in the actual execution of the duty of his office it shall be lawful to grant him any allowance not more than the whole of his pay.

(*f*) 11 & 12 Vict. c. 101, provides for the expense of erecting and maintaining lock-up houses *on the borders* of counties.

for that purpose to purchase and hold lands and tenements or to appropriate tenements belonging to the county, the expense to be defrayed out of police rates. See also s. 22 of 19 & 20 Vict. c. 69.

Money may be borrowed on credit of rate.—Under s. 13 authority is given to borrow money for purpose of above section on credit of police rates, to be repaid by yearly instalments.

Borough may consolidate police with county police.—Section 14.—It shall be lawful for the justices (now standing joint committee) of any county, and for the council of any incorporated borough situate in or adjoining to such county, to agree together for the consolidation of the county and borough police establishment. [The sanction of the Secretary of State is required before the agreement can be terminated (19 & 20 Vict. c. 69), ss. 20, 21, 23.]

Government of consolidated police.—Section 15.—In all such cases the chief constable of the county shall have the general disposition and government of the constables, subject to the provisions hereinafter contained, and at his pleasure may dismiss all or any of them; and whenever the chief constable shall dismiss one of the borough constables he shall report the fact, with his reasons for the dismissal, to the mayor of the borough, and the watch committee of the borough shall forthwith appoint another constable properly qualified, unless provision shall be made in such agreement that all constables shall be appointed by the chief constable; and no borough constable who shall have been dismissed by the chief constable shall be capable of being re-appointed for the same borough without the consent of the chief constable.

Fees.—Sections 16, 17, 18.—These sections are repealed by s. 28 of 22 & 23 Vict. c. 32, but the power of justices (now standing joint committee) to settle tables of fees is retained.

Additional constables.—Section 19.—It shall be lawful for the chief constable of any county, with the approval of the justices in quarter sessions assembled (now standing joint committee), if he shall think fit, on the application of any person or persons showing the necessity thereof, to appoint, and cause to be sworn in, any additional number of constables, at any place within the limits of his authority, *at the charge of the person or persons by whom the application shall be made*, but subject to the orders of the chief constable, and for such time as he shall think fit; and every such constable shall have all the powers, privileges, and duties of other county constables.

Discontinuance.—Provided always that it shall be lawful for the person or persons on whose application such appointment shall have been made, upon giving one calendar month's notice in writing to the chief constable, to require that the constables so appointed shall be discontinued (*g*).

Watchmen.—Sections 20, 21, 22, and 23 provide for discontinuance of watchmen, etc. See also 19 & 20 Vict. c. 69, s. 19.

Section 24 is repealed by s. 21 of same Act.

Separate rates.—Section 25.—In any county where two chief constables are appointed, the justices (now standing joint committee) may order

(*g*) As to percentage for superannuation purposes, see Home Office Circulars, *post*. (Twenty per cent. on salaries is deemed fair contribution from employer towards pension fund.)

that separate accounts be kept of the expenses of the separate forces, and that the rates be levied separately.

Number of superintendents.—Section 26. —Whereas it has been found unnecessary that a superintendent be appointed *for every petty sessional division of a county*, it shall be lawful for the justices (now standing joint committee), with the approval of Secretary of State, to direct how many superintendents shall be appointed, and to direct the appointment of *inspectors and sergeants* and other subordinate officers, with such gradations of rank and pay and such variety of duties as shall be found expedient; and justices can make orders regarding the attendance of the officers at their sessions. See also p. 411, as to "increases."

Police districts.—Section 27.—Justices (now standing joint committee) can divide county into police districts, and declare number of constables to be appointed for each district; report to be sent to the Secretary of State for approval.

Expenses.—Section 28.—General expenses in police districts to be defrayed in common by all the districts. *Local* expenses separately.

Constables' service.—Notwithstanding division into police districts, the constables shall continue to perform duty in any part of the county.

Sections 29 and 30 are repealed.

Monthly returns (*by chief constable*).—Every chief constable shall, on the first day of every month, transmit to the clerk of the peace for the county for which or for some district whereof such constable shall act a return showing the actual disposition and number of the constabulary force of the county or district for which such constable shall act during the preceding month, which return shall specify the changes made from time to time in such force as well in number as by name, and shall distinguish by number and name the members of the police force of any other district serving within his district; and the clerk of the peace shall cause the said return to be laid before the justices at the next ensuing quarter sessions for examination (s. 31).

(*By superintendents*). — Every superintendent appointed under this Act shall, on the first day of every month, send to the chief constable a return showing the actual disposition and number of the constables of the county under his superintendence during the preceding month, which return shall specify the changes made from time to time therein, as well in number as by name; and the chief constable shall send a copy of all such returns to the clerk of the peace for the county, to be laid before the justices of the peace at their next general or quarter sessions of the peace (s. 32).

Warrants of commitment —*How executed.*—Whenever a warrant of commitment of any person to any gaol or house of correction shall be directed and delivered to any constable in any county in which constables shall have been appointed under the said Act of the last session of Parliament, it shall be lawful for the justice or justices by whom such warrant shall be signed, if he or they shall think fit, in and by such warrant to command the constable to whom the warrant is directed, and all other constables to whom the warrant shall be successively delivered as hereinafter provided, to convey and deliver the body of the person so committed with the warrant, into the custody of the constable who shall be in attendance at the nearest or most convenient station house or strong room belonging to the said police force lying in the way towards the said gaol or

house of correction, or to such other constable as shall be appointed by the regulations of the police force to take charge of persons so committed; and every constable into whose custody any such person shall be so successively delivered shall endorse upon the warrant a certificate in writing under his hand of the delivery of such person into his custody, and the time and place of such delivery, and such certificate shall discharge the constable so delivering over the body of such person from further execution of the warrant; and it shall be lawful for any constable into whose custody such person shall have been so delivered to complete the execution of the warrant, by conveying and delivering the body of such person either to the said gaol or house of correction or into the custody of the constable in attendance at the next station house or strong room as aforesaid, or to such other constable as shall be appointed by the regulations of the police force to assist in taking charge of persons so committed; and every constable into whose custody any person shall be so delivered, and who shall have endorsed such certificate upon the warrant, shall have the same powers, privileges, and protections for and in the execution of such warrant as if the same had been originally directed to him by name (s. 33).

Section 34.—"*Interpretation*" *clause*, with proviso *re* Isle of Ely.

Section 35.—This Act, and preceding Act (1839), to be construed together unless inconsistent.

[Section contains proviso *re* "voting" by local constable—now repealed.

COUNTY AND BOROUGH POLICE ACT, 1856.

(19 & 20 Vict. c. 69.)

To render more effectual the Police in Counties and Boroughs.

[21st July, 1856.]

Section 1 enacts that a police force shall be established in every county.

Section 2 contains proviso *re* forces in course of establishment.

Section 3 provides for consolidation of divisional forces.

Section 4 provides for establishment, if required, of separate police districts in a county, and extended by 22 & 23 Vict. c. 32, s. 1.

Section 5, terms of arrangement where boroughs are consolidated with counties.

Reciprocal powers of county and borough constables.—Section 6.—The constables of every county appointed under the said Acts of the second and third and third and fourth years of Her Majesty or either of them, or this Act, shall have, in every borough situate wholly or in part within such county, or within any county or part of a county in which they have authority, all such powers and privileges and be liable to all such duties and responsibilities as the constable appointed for such borough have and are liable to within any such county, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within any such borough in which they shall be called on to act as constables, for conducting themselves in the execution of their office.

Constables to perform duties connected with the police as directed by justices or watch committees.—By s. 7, constables acting under the Acts 2 & 3 Vict. c. 93, 3 & 4 Vict. c. 88, and 5 & 6 Will. 4, c. 76 (for

which 45 & 46 Vict. c. 50, is now substituted, and this Act shall perform such police duties as the justices in quarter sessions assembled (now standing joint committee) or the watch committees may direct.

Section 8 (constables receiving fees) repealed by Police Act, 1890.

Constables voting at municipal elections (*h*).—By s. 9, no head or other constable already appointed or hereafter to be appointed for any borough, under the Act 5 & 6 Will. 4, c. 76 (for which 45 & 46 Vict. c. 50, is now substituted), except special constables, shall, during the time he continues to be such constable, or within six calendar months after he has ceased to be such constable, be capable of giving his vote for the election of any person to any municipal office in such borough, nor shall any such constable, by word, message, writing, or in any other manner, endeavour to persuade any elector to give or dissuade any elector from giving his vote for the choice of any person to hold any municipal office in such borough; offender to forfeit the sum of 10*l.*, recoverable by any person who shall sue for same within six months of offence. But see now Act of 1893 (which removes disability) and NOTE thereto *re* "*canvassing*," p. 413, *post*.

Superannuation, &c.—Sections 10 and 11 (pensions) are repealed by the Police Act, 1890, in which also s. 13 (chief constable's pensions) is embodied.

Section 12 (gratuities) is obsolete.

Annual criminal statistics.—By s. 14 the justices of every county and the watch committee of every borough shall, in October (now January) in every year, transmit to Secretary of State a statement for year, of the number of offences reported to the police within such county or borough respectively, with particulars thereof. A classified abstract of returns to be laid before Parliament. But see now Police Returns Act, p. 413.

Power to Her Majesty to appoint inspectors.—By section 15 it shall be lawful for Her Majesty to appoint three persons as inspectors under this Act, to visit and inquire into the state and efficiency of the police appointed for every county and borough, and whether the provisions of the Acts under which such police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge rooms, cells, or lock-up, or other premises occupied for the use of such police; and each of the inspectors so appointed shall report generally upon such matters to the Secretary of State, who shall cause such reports to be laid before Parliament.

On certificate of Secretary of State, one-fourth (*i*) **the charge for pay and clothing to be paid by Treasury.**—By s. 16, upon the *certificate* of Secretary of State that the police of any county or borough has been maintained in a state of efficiency *in point of numbers and discipline* for current year, it shall be lawful for the Commissioners of the Treasury to pay such sum towards the expenses of such police for the year mentioned in such certificate as shall not exceed one-fourth (*k*) of the charge for *their*

(*h*) The section also prohibited voting at parliamentary elections. But see now Police Disabilities Removal Act, 1887, p. 412.

(*i*) By 38 & 39 Vict. c. 48, the Police (Expenses) Act, 1875, this enactment so far as it limits the amount of contribution is repealed, and by the Police Act, 1890, is now put upon a different footing. See 419, *post*.

(*k*) All limit on amount of contribution by Treasury is removed by 38 & 39 Vict. c. 48. See now Police Act, 1890, *re* "Exchequer contribution."

pay and clothing, but such payment shall not extend to any additional constables appointed under s. 19 of 3 & 4 Vict. c. 88: Provided that before any such certificate shall be finally withheld in respect of the police of any county or borough, the report of the inspector relating to the police of such county or borough shall be sent to the justices of such county, or to the watch committee of such borough, who may address any statement relating thereto to the Secretary of State; and in every case in which such certificate is withheld, a statement of the grounds on which the Secretary of State has withheld such certificate, together with any such statement of the justices or watch committee as aforesaid, shall be laid before Parliament.

Boroughs with population not exceeding 5000, etc. (*l*).—By s. 17, no such sum as aforesaid shall be paid towards the pay and clothing of the police of any borough, not being consolidated with the police of a county under 3 & 4 Vict. c. 88, or this Act, the population of which borough according to the last parliamentary enumeration for the time being does not exceed five thousand.

Watchmen, etc.—Section 18 provides for expenses of watchmen, etc., until discontinued, and s. 19 requires sanction of Secretary of State for discontinuance in certain places.

Section 20 enacts that no agreement for consolidation of police shall be put an end to without sanction of Secretary of State.

Section 21 repeals 3 & 4 Vict. c. 88, s. 24.

Purchase of station houses, etc.—Sections 22 and 23 empower justices (now standing joint committee) to purchase station houses or strong rooms to be paid for out of county rates.

Station houses.—Section 23 incorporates with this Act the provisions of 8 & 9 Vict. c. 18 (Lands Clauses Consolidation Act, 1845), for the purpose of purchasing station houses, etc.

Unnecessary station houses.—By s. 25 the provisions of 7 Geo. 4, c. 18, as to disposal of station houses are extended to this Act.

Police in county of Chester.—Sections 25 and 26 relates to discontinuance of police in the county of Chester, hitherto maintained under the Cheshire Constabulary Act, 1852.

Sections 27, 28, and 29, relating to "Superannuation" (Cheshire), are repealed (Police Act, 1870).

Interpretation Clause.—By s. 30 the word "county" shall have the same meaning as is assigned to such word in 3 & 4 Vict. c. 88, except as to the soke or liberty of Peterborough, which for all purposes of this Act shall be deemed to be a county of itself; the word "borough" shall mean any borough or place incorporated under the provisions of the Act 5 & 6 Will. 4 (for which 45 & 46 Vict. c. 50, is now substituted).

The cinque ports and the towns of Winchelsea and Rye are deemed to form part of the county in which situated, and dealt with as a liberty (s. 30).

Section 31 enacts that 2 & 3 Vict. c. 23, and 3 & 4 Vict. c. 88, and this Act, are to be construed as one Act.

By s. 32, the Act is not to extend to the metropolitan police district or city of London.

(*l*) Under the powers of the Local Government Act, 1888, the police of boroughs with a population of less than 10,000 are merged in county force.

COUNTY POLICE ACT, 1857.

(20 & 21 VICT. C. 2.)

To facilitate the Appointment of Chief Constables for adjoining counties.
[9th March, 1857.]

After reciting 2 & 3 Vict. c. 93, s. 4, regarding appointment of the same chief constable *for two or more adjoining counties*, s. 2 of this Act empowers justices to appoint a person to be chief constable, although he may hold a similar appointment in an adjoining county (*m*).

COUNTY AND BOROUGH POLICE ACT, 1859.

(22 & 23 VICT. C. 32.)

To amend the Law concerning police in counties and boroughs.
[13th August, 1859.]

Section 1 empowers justices to consolidate or merge police districts formed under 3 & 4 Vict. c. 88, and 19 & 20 Vict. c. 69.

County constables not required to act in boroughs.—By s. 2 no county constable shall be required to act in any borough having a separate police establishment, except in execution of warrants of justices of such county, or by the order of his chief constable or superintendent: and in all cases of special emergency the chief constable or superintendent, when required so to do by the watch committee of any borough having a separate police establishment, shall have power to direct the county constables to act within such borough: and no constable of any borough having a separate police establishment shall be required to act out of his borough, except in execution of warrants of justices of such borough, or in pursuance of directions from the watch committee.

Voting at municipal elections.—(Section 3) now repealed by Police Disabilities Removal Act. See p. 413.

Resigning without proper notice.—Section 4 repeals part of s. 13 of 2 & 3 Vict. c. 93, but provides that in case any constable shall resign or withdraw himself from his duty without such proper leave or notice such resignation or withdrawal shall be *notified in writing, by the chief constable or by the superintendent* under whom the offending constable may have been placed, *to the treasurer of the county* or the paymaster of the constabulary force, and all arrears of pay then due to such constable so resigning or withdrawing shall be forfeited: and upon summary conviction of such offence before two justices, such constable shall be liable to a penalty not exceeding 5*l*.

Sections 5 and 6 are repealed by 45 & 46 Vict. c. 50, s. 5 (Municipal Corporations Act, 1882).

Superannuation—*Boroughs.*—Section 7 repeals 11 & 12 Vict. c. 14. Any superannuation fund created under that Act shall form part of the superannuation fund to be created under this Act.

Sections 8, 9, and 10 (Superannuation) repealed by Police Act, 1890.

(*m*) 7 & 8 Vict. c. 61, and 21 & 22 Vict. c. 68, relate to *detached parts of counties.*

Superannuation fund—*Fees.*—Section 11.—Any fee payable to any constable appointed for any borough shall be received as the watch committee (subject to the approbation of the council) may direct, to be paid over to the superannuation fund.

Sections 12 to 21 (*Superannuation*) are repealed, as also s. 23.

Section 22 (*n*) enacts that the superannuation fund for the whole county of Lincoln (hitherto separate) shall be one common fund.

Gratuities.—Section 24.—The court of general or quarter sessions for any county, and the watch committee, subject to the approbation of the council for any borough, may, upon the recommendation of the chief officer, grant to any constable in the said county (*o*) or borough, a gratuity in money as a reward for any meritorious act done by the said constable in the execution of his duty.

Section 25, relating to *embezzlement* by constables, is repealed (*p*).

Chief constable empowered to suspend constables.—Section 26.—The chief constable of any county police force, and the watch committee of any city, borough, district, or place, is and are hereby empowered *to suspend any constable* within their respective jurisdiction, whom he or they shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same; and the said chief constable or watch committee is and are hereby also empowered, at his or their discretion, *to fine any such constable* in a sum of money *not exceeding one week's pay*, and to *reduce* the said constable from a superior to an inferior rank, such fine and reduction in rank to be in addition to any other punishment to which the said constable may be liable.

Half pay of Government inspectors.—Section 27 enacts that the office or employment of inspector under the Act of 1856 shall not prevent the holder thereof from receiving any half pay to which he may become entitled.

Section 28, which repealed ss. 16—18 of 3 & 4 Vict. c. 88, as to local constables, is itself repealed by the Police Act, 1890.

THE POLICE SUPERANNUATION ACT, 1865.

(28 & 29 Vict. c. 35.)

An Act to amend the Law relating to Police Superannuation Funds in Counties and Boroughs. [22nd June, 1865.]

This Act is practically repealed, except so far as s. 2 (regarding "short titles of Acts") relates to the County and Borough Police Act, 1859.

The Police Act, 1890, is now the principal Act affecting the pensions of police.

An epitome of the provisions of the Act, which is an all-important one to police constables, is given at pp. 414 to 429, *post*.

Under it constables *become entitled*, after twenty-five years' approved service (subject, in some cases, to a limit of age) *to a pension for life*,

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(*n*) See also ss. 6—8 of 28 Vict. c. 35.

(*o*) This gratuity was formerly limited to "three pounds," but this is now altered by the Police Act, 1890, s. 24. Powers of quarter sessions are transferred to standing joint committee.

(*p*) See 24 & 25 Vict. c. 95, s. 1.

varying from thirty-sixtieths to thirty-one-fiftieths of their annual pay; and in case of incapacity, pensions are obtained on a medical certificate after fifteen years' approved service, as also at any time in cases where the incapacity arises through injury in the execution of duty.

NOTE.—Pensions were formerly granted, *at the discretion of justices*, under 3 & 4 Vict. c. 88, s. 11, and the Superannuation Act of 1865, which allowed the granting of a pension equal to *half pay* on completion of *fifteen* years' service, and *two-thirds pay* after *twenty* years. See p. 398.

RULES FOR COUNTY POLICE.

The following rules for the government of county constabulary (dated April 12th, 1886) are those referred to in 2 & 3 Vict. c. 93, s. 3 :—

QUALIFICATIONS.

CHIEF CONSTABLE.

His age (except in the case of his being promoted or transferred from another office in a police force, or under other special circumstances to be approved of by the Secretary of State) must not exceed forty-five years.

He must be certified by a medical practitioner to be in good health and of sound constitution, and fitted to perform the duties of the office.

He must be recommended to the Secretary of State by the magistrates in whom the appointment is vested, as a person of good character and qualifications.

SUPERINTENDENT OR INSPECTOR.

His age must not exceed forty years, and he must not be less than 5ft. 7in. high, without his shoes (except in the case of his being promoted or transferred from another office in a police force, or under other special circumstances to be approved of by the Secretary of State, on the recommendation of the chief constable, concurred in by two justices of the peace in petty sessions assembled).

He must be a man of good character and general intelligence, able to read and write well, and to keep accounts.

He must be certified by a medical practitioner to be in good health, of sound constitution, and fitted to perform the duties of the office.

SERGEANT OR CONSTABLE.

His age must not exceed thirty-five years, and he must be not less than 5ft 7in. high, without his shoes, subject to the same exception as in the case of superintendent or inspector.

He must be active and intelligent, able to read and write, and of good character and connections; and must be certified by a medical practitioner to be in good health, of a sound constitution, and fitted to perform the duties of the office.

Chief clerk.—An officer of any of the grades of superintendent, inspector, sergeant, or constable may be employed as chief clerk; his rank to depend on circumstances and the strength of the force.

If a candidate for any of the above offices has been previously employed in any branch of the public service, civil or military, he shall not be

eligible for appointment unless he produces satisfactory testimonials of his conduct in such service; and a person who has been *dismissed* from any police force shall not be eligible for appointment in any other police force.

No person shall be appointed to, or retained in any of the above offices who shall hold any other office or employment for hire or gain (2 & 3 Vict. c. 43. s. 10), unless the duties of such other office or employment shall be recognized, and their performance sanctioned as police duties by the Secretary of State, or who shall sell, or have any interest in the sale of any beer, wine, or spirituous liquors.

PAY.

The following scales of pay (which are exclusive of expenses of office, stationery, travelling on duty, or purchase of horse, cart, or forage, for which, when necessary, separate provision should be made) have been drawn up with the Secretary of State's sanction, and one or other of them, according to local circumstances, is recommended for adoption when any alteration of the existing rates of pay of a police force is proposed. See p. 411.

CONSTABLES.

Weekly Rates.

	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
Third class - - - - -	19 10	20 5	21 0	21 7	22 2	22 9	23 4
Second class - - - - -	21 0	21 7	22 2	22 9	23 4	23 11	24 6
First class - - - - -	22 2	22 9	23 4	23 11	24 6	25 1	25 8
After two years in first class -	23 4	23 11	24 6	25 1	25 8	26 3	26 10
After five years in first class -	24 6	25 1	25 8	26 3	26 10	27 5	28 0
After eight years in first class -	25 8	26 3	26 10	27 5	28 0	28 7	29 2

NOTE.—Men joining the force should be placed in the third class, and should be promoted to the second and first class only as they are found to qualify themselves for their duties. When a constable is placed on the first class he is considered to be a trained and efficient constable, and from that time payment by length of service commences.

SERGEANTS.

Weekly Rates.

	s. d.	s. d.	s. d.	s. d.	s. d.	s. d
On appointment - - - - -	26 10	27 5	28 0	28 7	29 2	29 9
After two years - - - - -	28 0	28 7	29 2	29 9	30 4	30 11
After five years - - - - -	29 2	29 9	30 4	30 11	31 6	32 1
After eight years - - - - -	30 4	30 11	31 6	32 1	32 8	33 3

Inspectors.

Yearly Rates.

	£	s.	£	s.	£	s.
On appointment - - - - -	90	0	95	0	100	0
After five years - - - - -	97	10	102	10	107	10
After ten years - - - - -	105	0	110	0	115	0

Superintendents.

	Second Class.	First Class.
On appointment - - - - - -	£120 - -	£150
After five years - - - - - -	£135 - -	£175
After ten years - - - - - -	£150 - -	£200
When holding office of deputy chief constable	£10 additional	£20 additional.

No rates of pay in excess of those in the above scales may be given except for special reasons to be submitted to the Secretary of State and approved by him.

The chief clerk may have the rank and pay of one or other of the above grades according to circumstances and the size of the force.

The chief constable's pay should depend on the strength of the force under his command and other circumstances, and should be specially fixed in each case with the approval of the Secretary of State, but should not be less than 250*l.* a year.

Constables are not to receive for their own use any *fees*, which, by the 8th section of the 19 & 20 Vict. c. 69, are to be paid to the treasurer of the county; but the above rates of pay are intended to be exclusive of any allowance for extraordinary expenses under the 18th section of the 2 & 3 Vict. c. 93.

CLOTHING, ACCOUTREMENTS, AND NECESSARIES.

Superintendents, inspectors, sergeants, and constables are to be supplied with the following articles in addition to their pay, viz.:—

Annually.

One coat with badge.
Two pairs of trousers.
One pair of boots and one pair of shoes, *or*
Two pairs of boots.
One hat, helmet, or cap.

Biennially.

One great coat and badge.
One serge jacket (optional).
When required, but not more frequently than once in every three years,
One cape and one pair of leggings.

A constable's staff, a pair of handcuffs, and a belt and lantern are to be supplied to each constable.

Sabres may be supplied to mounted constables, and a cutlass may be supplied to any constable whose beat is so situated that, in the opinion of two justices of the county in petty sessions assembled, it is necessary for his personal protection in the performance of his duty. The cutlass is to be worn at night only, or at times when rioting or serious public disturbance has actually taken place or is apprehended. A chief constable may, upon any sudden emergency, order that one or more of the constables should be so armed; he shall, on each occasion of giving any such order, report the same, and the reason for such order, to any two justices of the peace for the county as soon afterwards as is practicable.

No constables of any county force are to use or to be armed with revolvers, except with the sanction of the Secretary of State and under regulations to be approved by him.

General Instructions.

The chief constable will cause a register of charges according to the annexed form (p. 410) to be kept at each division under his orders as a record of the criminal cases in the division. He will also cause a general report book of all cases reported to the police to be kept at each division of the county.

CONSTABULARY.

REGISTER OF CHARGES for the month of _____ 18 .

1	2	3	4	5	6	7	8		9	10	11	12	13	14	15	16	17							18
							Property.										Description of Prisoner.							
No. of Charge.	Date and Hour of Apprehension.	Persons charged: Name, Address, and Occupation.	Charge.	Persons charging: Name, Address, and Occupation (and personal signature if not on warrant.)	Witnesses: Name, Address and Occupation.	By whom taken into custody and whether on warrant.	Personal Property found on Prisoner and how disposed of	Property, subject of charge, found on Prisoner or elsewhere, and how disposed of.	Detained.	Whether admitted to bail, and if so, Day and Hour.	Signature of Constable taking the charge.	No. of Charge.	Magistrate before whom charge is brought.	Charge how disposed of.	When liberated or handed over to Gaoler.	Result of Trial at Assizes or Sessions, and whether sent up to Police Supervision.	General Classification of Offence.	Age.	Height.	Hair.	Eyes.	Complexion.	Particular marks.	Character if known.	Remarks.

NOTES.

Column 1.—The numbering of the charges should commence from September 30th annually. But see now Police Return Act, 1892.

Column 8.—The entries in this column should show whether the property is returned to the prisoner, sent to the gaol, returned to the owner, or how else it is disposed of, and they should correspond to receipts for the property, which should be taken in every case before it is given up by the police.

Column 13.—If a fine is inflicted, it should be stated whether the fine is paid, or the prisoner committed in default.

Column 16.—The offence should be classified in accordance with the classification followed in making up the Government returns of crime for the year. See "instructions" issued in connection with new forms of returns.

(*See also Police Returns Act*, 1892, p. 413.)

The chief constable will make an immediate report to two justices of the peace of any serious disturbance of the public peace that has taken place or is apprehended, and of any crimes of an aggravated nature committed, for which the parties charged or suspected have not been apprehended; and in order that further arrangements, if required, may be made without delay, he will immediately transmit duplicates of such information to the Secretary of State for the Home Department, so as to ensure the earliest communication to the proper authorities of any matter affecting the public peace.

The chief constable will, subject to the approval of the justices, frame all such orders and regulations as he shall deem expedient for the government of the force, and shall submit to the justices at every quarter sessions copies of all regulations and general orders made by him since the preceding sessions.

The chief constable will make a report in writing to the justices assembled at every quarter sessions of the peace for the county, of the amount and effective state and operation of the force, and shall append thereto a statement of the distribution of the force, of the number of persons apprehended by the police, the nature of the charges against them, and the result of the proceedings, the number of offences reported to the police, and any other particulars which may tend to show the state of crime in the county. Immediately after the termination of the sessions, the chief constable shall transmit a copy of this report to the Secretary of State for the Home Department, with a copy of any note or minute made thereon by the justices. But the chief constable need not transmit with such report the statement appended thereto, unless directed to do so by the justices.

Circular—Increases in Force—Officers, pay, etc.

A Home Office circular, dated January 17th, 1889, directs that as no direct Government contribution will hereafter be made in aid of local police expenditure, it will no longer be necessary for the local police authorities to submit, for the Secretary of State's approval, proposals involving increase of cost, with a view to providing for the increased charge in the estimates.

The instructions in the circulars of March 24th, 1876, October 16th, 1877, and February 18th, 1878, are, therefore, no longer in force.

The Secretary of State's sanction, however, is still required—

(1.) For any alteration of the number of constables in a county police force: 2 & 3 Vict. c. 93, s. 2.

(2.) For any alteration in the number of superintendents and in the other ranks of officers: 3 & 4 Vict. c. 88, s. 26.

(3.) For any alteration in the number of constables in any district of a county divided into police districts under 3 & 4 Vict. c. 88, s. 27.

The rates of pay of county constabulary will continue subject to the rules of April 12th, 1886, made under 2 & 3 Vict. c. 93, s. 3; and the Secretary of State's sanction will be required for any rates of pay exceeding the scales mentioned in those Rules.

POLICE DISABILITIES REMOVAL ACT, 1887.

(50 VICT. c. 9.)

An Act to remove the Disabilities of the Police to vote at Parliamentary Elections. [23rd May, 1887.]

1. Repeal of certain enactments (mentioned in schedule to Act) relating to voting by police.

2. Where a constable is or is likely to be, on the day of any election, sent or employed in the discharge of his duty so as to prevent him voting at the polling booth or station at which he would otherwise be entitled by law to vote, the following enactments shall have effect :—

(1.) Such constable may, at any time within seven days before the election, *apply to the chief constable for a certificate*, and the chief constable shall thereupon give a certificate under his hand, stating the name of the constable, his number in the police force, *his number and description on the register of voters, and the fact* that he is so sent and employed ;

(2.) The presiding officer at any polling booth or station shall, on production by such constable of the said certificate, allow him to vote at that booth or station, and shall forthwith cancel the said certificate, and deal with the same in like manner as the counterfoils of voting papers are directed by law to be dealt with ;

(3.) No such constable shall, under this section, be entitled to vote at any election at which he would not, but for this section, be entitled to vote, nor more than once in any election, and if he so votes, or attempts to vote, he shall be subject to all the penalties imposed by law on a person personating or attempting to personate a voter at such election ;

(4.) In this section,—

(a.) "Constable" includes any person belonging to a police force ;

(b.) "Chief constable" includes an assistant chief constable, a commissioner or assistant commissioner of police, a head constable, and any other person for the time being in command of a police force, or acting in that capacity ;

(c.) "Register of voters" has same meaning as in Ballot Act, 1872.

3. A person otherwise entitled to be registered as a voter at parliamentary elections in respect of the occupation of a dwelling-house shall be deemed an inhabitant occupier thereof as tenant notwithstanding his temporary absence therefrom in the execution of duty as a police officer during a part of the qualifying period, not exceeding four consecutive months.

4. Section 9 of 19 & 20 Vict. c. 2, shall be read and construed as if for the word "therein," were substituted the words "in certain elections of members to serve in Parliament."

5. *Proviso, re* Corrupt Practices Prevention Act, 1854, s. 8.

6. Act may be cited as Police Disabilities Removal Act, 1887.

Certificate.

In the (*q*) of No. .

The day of , 189 , (*r*) of a constable of the police force of the said (*q*) whose number in the said force is

(*q*) County or borough. (*r*) Name and address of constable.

number and whose rank in the said force is that of (*s*) , and whose number and description on the register of voters entitled to vote at the election of members to serve in Parliament for the (*t*) of is as follows (*u*) , having applied to me the undersigned, this day, being within seven days before the election of members for the said (*t*) for a certificate under section 2 of the Police Disabilities Removal Act, 1887, I hereby certify that the said (*r*) of is (*or*, is likely) to be so employed on the day of next, at (*x*) in the discharge of his duty as such constable as hereinbefore described as to be prevented from voting in the said election at the polling booth at (*y*) at which he would otherwise be by law entitled to vote.

(*Signed*) . (See s. 2 (4)).

POLICE DISABILITIES REMOVAL ACT, 1893.

(56 VICT. C. 6.)

An Act to remove Disabilities of Policemen with regard to their Vote in Municipal, School Board, and other Elections. [12th May, 1893.]

Section 1.—The enactments mentioned in Schedule to Act (*z*) which disqualify police from voting at municipal and other elections are repealed.

Section 2.—The provisions of s. 2 of the Police Disabilities Removal Act of 1887 shall apply to all municipal and other elections, as well as parliamentary elections, subject to the modifications that the words "register of voters," shall mean the register of voters in force for such municipal or other elections.

Section 3.—This Act and the Act of 1887 shall be construed as one Act.

[NOTE.—The prohibitions as to *canvassing*, which were not touched by the Act of 1887, are also not affected by this Act. Police are still liable to a penalty of 10*l.* if they attempt "to persuade" an elector to give, or "dissuade" an elector from giving, his vote (*a*); see p. 402.

POLICE RETURNS ACT, 1892.

(55 & 56 Vict. c. 38.)

Section 1.—The annual statement required by s. 14 of 19 & 20 Vict. c. 69 (Police Act, 1856) (p. 402), shall be made for each *calendar* year, and shall be transmitted to Secretary of State as soon as may be after termination of each year.

A notice of general instructions *re* preparation will be found with Circulars of Secretary of State, *post*, p. 453.

(*s*) State "sergeant," or otherwise.

(*t*) Describe constituency.

(*u*) Insert copy from register of voters.

(*x*) Place on duty.

(*y*) Booth where constable would otherwise have voted.

(*z*) The words repealed are, in s. 9 of 19 & 20 Vict. c. 69, "be capable of giving his vote for the election of any person to any municipal office in such borough," and the words "nor shall any such constable," p. 402.

In s. 3 of 22 & 23 Vict. c. 32, "be capable of giving his vote for the election of any person to any municipal office in any borough within such county, or in any other borough, in which such constable has authority, nor shall any such constable."

(*a*) 19 & 20 Vict. c. 69, s. 9, and 22 & 23 Vict. c. 32, s. 3.

POLICE ACT, 1890.

(53 & 54 VICT. c. 45).

[14th August, 1890.]

This Act replaces the Superannuation Act of 1865.

Under it constables *become entitled*, after twenty-five years' approved service (subject, in some cases, to a limit for age), *to a pension for life*, varying from thirty-sixtieths to thirty-one-fiftieths of their annual pay; and in case of incapacity, pensions are obtained on a medical certificate after fifteen years' approved service, as also at any time in cases where the incapacity arises through injury in the execution of duty. A *pension scale* within the maximum and minimum limits prescribed by the Act is to be adopted by police authorities, who may also fix a limit of age at which pensions are attainable (*b*). *Gratuities* can also be granted to constables and to widows and children. *Former service* in police and civil service can be counted under certain conditions. See ss. 4 and 14.

Saving.—The Act is not to apply to any existing constable who, before April 1st, 1891, declined to accept the provisions of the Act.

As to pensions formerly granted, see p. 398.

PART I.—SUPERANNUATION OF CONSTABLES.

1. Pensions.—Subject to provisions of Act, every constable—

(a.) If he has completed not less than *twenty-five years' approved service* shall (subject to age limit) be entitled *without a medical certificate* to retire and receive a pension for life (*c*).

(b.) If incapacitated by "infirmity of mind or body" *after* he has completed *fifteen years' approved service*, he can retire on medical certificate.

(c.) If incapacitated *before fifteen years' approved service*, he can retire (on certificate) and may receive a gratuity.

(d.) If incapacitated by *injuries received on duty* he can (on certificate) retire on pension. See s. 3 and Schedule 1 of Act.

2. Pensions to widows, etc.—(1.) If a constable die while in police force from *injury received on duty*, the police authority *shall grant* pension and allowances to widow and to his children;

(2.) If the constable die from any other cause, a gratuity only *can be* granted;

(3.) If a constable pensioned through injury die (from the effects of injury) *within twelve months* of grant, a pension may be granted to widow.

(4.) If a constable die (from any cause) *within twelve months* of grant, *gratuities* may be granted to widow and children.

3. Pension scale.—"Ordinary pensions," fixed scale within maximum and minimum limits of Act. (Schedule 1, Part I).

"Special pensions," at scale set forth in Schedule 1, Part II.

(*b*) The limit for constables and sergeants is not less than fifty or more than fifty-five years; for officers above that rank not more than sixty years.

(*c*) Within four months of notice given.

Schedule 1, Part III. applies to *all* pensions, gratuities, etc.

Sub-section (6.)—A police authority may *adopt a new scale*, but such is not *without his consent* to affect any constable already appointed.

4. Reckoning approved service.—(1.) The service of a constable shall be subject to deduction for sickness, misconduct, or neglect of duty according to regulations of force (s. 20).

The expression "approved service" means such service as may after deductions (if any) *be certified* by police authority to have been *diligent and faithful service*. Proviso *re* service before twenty-one years of age (*d*).

(2).—*Certificate.*—The certificate of chief officer of force shall be sufficient evidence of service.

(3.)—*Appeal.*—Where a deduction is made from a constable's service due notice of same shall be given to him, and he can appeal to his chief officer against any act of a superior which prevents him reckoning approved service. In boroughs the chief officer's decision requires approval of watch committee.

(4.)—*Removal.*—Where a constable has served in more than one police force *in the United Kingdom*, approved service in any such force (see s. 26), in which he has completed *not less than three years' approved service*, and from which *he has, with the written sanction of the chief officer of that force removed* (*e*) *to another force, shall be reckoned as approved service in the force in which the constable is serving at the time of his retirement* (*f*). (See ss. 15 (2) and 30 (8).

(5.)—*Army Reserve.*—Where a constable with the knowledge of his chief officer belongs to the army reserve, and is called out for service, he shall be entitled on returning to reckon any approved service he was entitled to previously.

5. "Incapacity."—(1.) Before granting "an ordinary pension," on the ground of incapacity, the police authority *shall be satisfied* by the evidence

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(*d*) Service before twenty-one is not usually included. Evidence as to age is not obligatory : 55 J. P. 365.

(*e*) "Removal" must be with "sanction" : 56 J. P. 412. It should be to a *specified* force : 56 J. P. 604 ; also, it should be *at once* carried out, or if delayed, the constable should be "in course of removing" during the interval : 55 J. P. 621.

It is considered that a constable who resigns *without any intention* of entering another force, but subsequently rejoins the police service (even after a very short interval), cannot be said to have "removed" within the meaning of the Act : 56 J. P. 412 and 604 ; and 55 J. P. 45 and 90. This "sanction" to the removal should be given at the time of the retirement.

If a constable "resigns" and afterwards rejoins another force, his removal cannot be said to carry with it the "sanction" required under sub-s. (4) ; see 55 J. P. 750.

For purposes of pension, service in any county force would count as "approved service" where the constable afterwards joined metropolitan or other police : 55 J. P. 685. (*Cant* v. *Lancashire Police Authority* is the first important case bearing on this matter).

(*f*) The provisions of this section and s. 30 (8) are similar in character. The latter, however, is a *temporary* measure to meet the case of "existing constables." Section 4 (4) affects all constables appointed since April 1st, 1891 (s. 37) : 56 J. P. 735.

of a medical practitioner selected by them "that the constable is so incapacitated and that the incapacity is likely to be permanent."

(2.) Where a "special pension" is applied for, evidence of injury being received in execution of duty is required, also as to whether it was accidental or not, and whether "total" or "partial" disability.

(3.) Where a pension is granted for "incapacity," the police authority *shall*, "yearly or otherwise," satisfy themselves that the incapacity continues until power to require constable to serve again ceases.

(4.) *Resuming duty.*—In the event of incapacity ceasing, the police authority may cancel the pension, and require the constable again to serve (*g*) in same position as regards rank and pay.

(5.) Where a constable so serves again the provisions of this Act "shall apply as if he had not previously retired."

(6.) Where a pension is granted to a constable on a scale applicable to "total disability," it shall be *for a fixed period* in first instance.

If "the pensioner's disability" becomes *partial*, the pension shall be re-adjusted.

(7.)—*Refusal to be examined.*—The sub-section deals with case of constable *refusing to be medically examined* (*h*).

(8.)—*Decisions final.*—The decision of police authority on matters referred to shall be final, but in *borough, constable may appeal* to council of borough. See also s. 11.

6. **Reduction of pension.**—If a police authority are satisfied "on medical evidence" that a constable retiring through infirmity has contributed thereto "by his own default, or his vicious habits," they may reduce his pension "by an amount *not exceeding one-half.*"

7. **Assignment, etc.**—A pension (referred to as "a grant") is not to be assigned or charged.

(1.) Assignment, or charge on a grant, shall (unless for benefit of family) be void, and shall not, in case of bankruptcy, pass to creditors.

The police authority can (sub-s. (2), (3), (4),) apply grant: to repay guardians for parochial relief; to benefit anyone pensioner is liable to maintain; to institution or person having care of pensioner, if insane; with surplus to wife or relatives.

(5.) On death if balance of pension due is less than 100*l.*, probate is dispensed with.

Sub-sections (6), (7), (8), provide for—

(6.) Payment to minors. (7) Receipts taken in discharge of payments, and (8) The making of rules by police authority, *re* declarations relating to grants payable.

(*g*) Apparently *at option* of police authority.

(*h*) *Power re Medical Examination* (using power for other purposes), *R.* v. *Lord Leigh and others*, 12 T. L. R. 545 (July 25th, 1896). Application for mandamus to hold meeting to requisition county council (Warwickshire) for payment of arrears of pension to a former chief constable (pensioned January, 1892). Rule discharged; notice of appeal given. [Appeal allowed (November, 1896), see 61 J. P. 4].

8. Forfeiture, etc.—A pension or allowance may become forfeited if the grantee—

(a.) Be sentenced to penal servitude or imprisonment exceeding three months, with hard labour, or twelve months, with or without hard labour.

(b.) Knowingly associates with thieves.

(c.) Refuses to give information and assistance to police for detection of crime, apprehension of criminals, and suppression of disturbance.

(d.) Carries on any illegal business or any occupation in which he has made use of fact of former employment in the police in a manner which the police authority consider improper.

9. Pension by fraud.—Any person obtaining pension by false declaration, personation, or malingering, or by feigning disease or infirmity, or by maiming, or by any fraudulent conduct, is liable to penalty or imprisonment.

10. Right of dismissal.—Nothing in this Act shall prejudice the existing right of any police authority to dismiss or reduce any constable, or to refuse a pension on account of negligence, misconduct, etc.

11. Appeal.—In the following cases appeal is allowed :—

(a.) Where a pension is declared forfeited.

(b.) Where a constable is dismissed without a pension to which entitled, or where a constable or his widow or child claims a pension or allowance, which is refused.

The constable, widow, or child, may apply to the police authority for a re-consideration of the claim, and if aggrieved may apply to the next court of quarter sessions, the decision of the court to be final, "but nothing in this section shall confer a right to appeal against the exercise of any discretion, or against any decision which is declared by this Act to be final." See s. 5 (8), s. 4 (3), and s. 32.

12. Chief officer.—The Act shall apply to a chief officer of police, and to the assistant commissioner of the metropolitan police, similarly as to any other constable, except as to certificates of service and sanctions for removal.

13. Suspension.—A pension may be suspended if the pensioner—

(1.) Takes service in a police force.

(2.) Is appointed to any office paid out of money provided by Parliament, or by rates, in such case the amount of pension is to be proportionate. (Pension and salary may equal one and a half times remuneration of original office).

NOTE.—This section is amended by the Police Act, 1893, s. 4, p. 439.

14. Service in several capacities. (*i*)—Where a person has served in two or all of the following capacities—

(i.) As a civil servant defined in 50 & 51 Vict. c. 67 ;

(ii.) In a police force paid out of police fund ;

(iii.) In a police force paid out of money provided by Parliament ;

(*i*) Not applicable to service in the Army or Navy. See also s. 26.

he shall be entitled for purpose of pension to reckon his entire service in both or all capacities. See s. 4.

Provided that—

(1.) *Three* years' police service count as *four* years' civil service, and conversely.

(2.) The pension be payable from money provided by Parliament and from pension fund proportionately.

15. Rateable deductions. –(1.) The police authority of every police force shall deduct from the pay of every constable—

(a.) A sum not exceeding 2½ per cent. per annum, referred to as "the rateable deduction" (see s. 17).

(b.) Such stoppages during sickness, and fines for misconduct, as may be provided by the regulations: ss. 16 and 20.

(2.) *Where a constable has "removed"* (*k*) to some other police force or forces, and becomes entitled to pension, the police authority in whose service he then is, *shall be entitled to call upon the other police authority* (*l*) or authorities with whom he served, and they shall contribute a proportionate part of any pension to such constable to be settled by agreement between the authorities, or by arbitrator approved by the Secretary of State.

16. Pension fund.—(1.) There shall be a pension fund (*m*) of every police force, and there *shall be carried* to that fund—

(a.) The deductions (including stoppages and fines) made from pay of constables (s. 15).

(b.) Fines imposed on constables (by court of summary jurisdiction), or for assaults on constables, and fines imposed for other offences, awarded to informers, being constables (*n*).

(c.) Such fines and fees (ss. 23 and 34) payable to constables as *by any Act* (*o*) are directed to be carried to superannuation fund (*p*).

(d.) Sums arising from the sale of cast-off police clothing.

(e.) Such proportion of sums received for services of constables lent for payment as the police authority may consider *to be a fair contribution* to the pension fund.

(f.) Any payments or contributions payable under any local or personal Act to superannuation fund.

(*k*) See note to s. 4.

(*l*) It is doubtful as to whether a Scotch force is liable to contribute See 55 J. P. 504 and 56 J. P. 237 (s. 40 of Act).

(*m*) See s. 33 (1).

(*n*) There does not appear to be any book which gives list of offences referred to; they can be gathered from the statutes at large.

(*o*) It is provided by s. 31 of the Act that its provisions shall have effect, notwithstanding anything in any other Act generally or locally to the contrary. In case of dispute between authorities regarding apportionment or crediting of fees, under any local Act, s. 16 would prevail over the provisions in a local Act. See 57 J. P. 60.

(*p*) The paragraph is evidently intended to keep alive power of court under s. 66 of Licensing Act, to make such orders as therein contemplated with effect that s. 16 (2) only takes effect as to one moiety where order was made as to the other moiety, or as to the whole where no order is made: 56 J. P. 349; 56 J. P. 379.

(g.) All dividends and other annual sums received on investments of pension fund.

(2.) *Unless the authority having control of the fund* to which the sums hereinafter mentioned would, but for this section, be carried, *otherwise resolve*, and except so far as the said sums are subject to the foregoing provisions of this section, *there shall also be carried to the pension fund*, the following sums, namely :—

(h.) Sums received for pedlars' and chimney sweepers' certificates.

(i.) Fees (s. 23) received by constables in execution of duty (*q*).

(k.) Fines imposed by court of summary jurisdiction for offences under the Licensing Acts, 1872—1874, or for any similar offence under a general or local Act (*r*).

(3.) A police authority can credit to pension fund sums under control of police except in case of fund held on private trust.

(4.) Resolutions passed for purpose of section may be revoked or varied.

(5.) Provisions of section to have effect, any charter or other Act notwithstanding.

NOTE.—Section 66 of Licensing Act, 1872, is not repealed by this Act, but unless county council pass a contrary resolution, s. 65 of Licensing Act is inoperative, and the *whole* of the fines under that Act are to be carried to the pension fund ; no resolution to this effect is required. The result follows, unless there is a resolution *to the contrary* : 55 J. P. 334 : 56 J. P. 37 ; see note, paragraph (*c*), *ante*.

The reference to "local Acts" is to provide for cases where a local Act imposed fines for drunkenness, or offences similar to those under Licensing Acts. Fines to be carried to the pension fund, unless the authority who should receive them resolve to the contrary : 55 J. P. 334 ; see note, paragraph (*c*), *ante*.

The words as to "similar offences" in paragraph apply to offences under a local Act similar to offences under Licensing Acts, such as drunkenness (55 J. P. 139), also offences created by the Metropolitan Police Acts, such as harbouring constables, offences in refreshment houses, the making of internal communications (licensed premises), and offences under 35 Geo. 3, c. 113 ; 55 J. P. 398.

17. Exchequer contribution.—(1.) The annual grant out of Customs and Excise duties for police superannuation, referred to as "the Exchequer contribution," shall be distributed among the police forces in England and Wales (Metropolitan excepted) according to the following basis, amounts to be credited to pension fund—

(a.) To each police authority "a sum equal to the amount of the rateable deductions (s. 15) made during the year" (ending September 29th).

(b.) The *residue* to be distributed proportionately to the amounts paid by each authority for year (September 29th) "in respect of pensions, allowances, and gratuities out of their pension funds respectively."

(2.) But no payment is to be made to a police authority unless the Secretary of State gives *a certificate* "that the management and efficiency

(*q*) Includes fees received by inspectors of weights and measures in counties, where police act as such : 55 J. P. 267.

(*r*) See note to paragraph (*c*), s. 16.

of the police force under that authority, and the administration of the pension fund of that force have during that year been satisfactory."

(3.) Before withholding such certificate, the Secretary of State shall communicate with the police authority, and if the *certificate be withheld* a statement shall be laid before Parliament.

(4.) The sums payable shall be certified by Secretary of State who has power to vary certificate.

(5.) The Secretary of State is empowered in event of "inequitable" payment between two forces "to make such modification in the basis of distribution as appears to him to be necessary to meet the equities of the case."

(6.) Power is given to the Secretary of State to vary the basis of distribution. See also H. O. circular, p. 436, *post*.

(7.) This section to operate on passing of Act.

18. Investment of funds.—(1.) Sums carried to the pension fund shall be accounted for and paid to the treasurer as the police authority direct, and may be dealt with as *annual income* of fund.

(2.) The pension fund shall be kept as a *separate fund*, but the treasurer of the police fund shall be the treasurer of the pension fund. All enactments and regulations relating to accounts of police fund shall, so nearly as circumstances admit, apply to pension fund.

(3.) At the end of each financial year the surplus of the annual income of the pension fund shall be invested "as the police authority (*s*) direct," and in any manner authorized by law for investments by trustee (*t*). Investments are referred to as "the *capital* of the pension fund."

(4.) The *capital* of the pension fund shall not be *applied* for paying any sums payable out of that fund.

NOTE.—Section 33 (1) bears largely upon this section. It provides that in a county the *powers of the police authority* with respect to *investments* shall be exercised *by the county council*. It seems to follow from this, that the county council are to direct in whose name the surplus is to be invested under s. 18 (3). It has been suggested that the investments required can conveniently be made in the name of the county council as a body corporate, with a common seal, and that it is not necessary to appoint trustees: see 55 J. P. 316. Formerly the standing joint committee appointed the trustees. Section 33 further provides that any sum payable under the Act by the police authority shall be payable by the county council on the requisition of the standing joint committee. *The council have no power to go behind the requisition of the standing joint committee*: *Ex parte the Somersetshire County Council*, 54 J. P. 182. But by s. 18 (2), the provisions as to accounts of the police fund are to apply; the payments out of the police fund must apparently be made in manner provided by s. 80 (3) of the Local Government Act, 1888: 55 J. P. 267, 268.

19. Guarantee of fund.—(1.) Should the *annual income* (*u*) of the pension fund be insufficient to pay expenses and liabilities, the deficiency must be supplied out of the police fund.

(2.) Special provision is made in case of deficiency in a county divided into districts under the County Police Act, 1840.

(*s*) See note and s. 33.

(*t*) Extended by Police Act, 1893, s. 5.

(*u*) See s. 18 (1).

(3.) Provision in case of deficiency where borough and county force has been consolidated.

(4.) Where the police rate is limited, an additional rate may be levied for the purpose of raising sum to supply deficiency.

20. Power to make regulations.—(1.) Every police authority may make regulations (consistent with this Act) with respect to the *deductions from a constable's service* for sickness, misconduct, or neglect of duty, and with respect to *stoppages of pay* during sickness and fines for misconduct (*x*), and with respect to the mode in which pensions are to be paid.

(2.) All regulations for a police force made before the commencement of this Act with respect to any of the above matters, shall have effect as if made under the powers of this section. See also H. O. Circular, p. 438, *post*.

21. Power to return deductions.—The police authority *may* (*y*) grant to a constable leaving a police force without pension or gratuity (unless he be dismissed), the *whole or part* of the "rateable deductions" (see s. 15 (1)) which have been made from his pay. A proviso regulates cases of "removal."

22. Provisional orders.—The police authority may apply to the Secretary of State for a provisional order to deal with pension fund—

(1.) Where it appears that the assets exceed amount required to meet liabilities.

(2.) If it appears that the fund being sufficient to meet liabilities, further investments are unnecessary.

(3.) Where a local Act provides for payment to *a special force* (see sub-s. (7)) in any area of the same pensions, etc., as are by local Act provided for police of area, the authority may apply for a provisional order.

(i.) To adjust financial relations between police and special force.

(ii.) For applying provisions of Act to special force.

(4.) Provisional orders made require to be confirmed by Act of Parliament.

(5.) If a petition be presented against any Bill for confirming order, the Bill may be referred to a select committee,

(6.) All expenses incurred in relation to any order shall be defrayed by authority applying for order.

(7.) For the purposes of this section the expression "special force" means a fire brigade, fire police (*z*), or other like force: see also s. 36 (4).

(*x*) See ss. 15 (1), 16 (1), and s. 4 (1).

(*y*) Cannot be claimed as a matter of right.

(*z*) By the Police Act, 1893, s. 1 (p. 439, *post*), constables employed on fire duty shall be deemed to be engaged on police duty, and entitled to pension if injured, a fair "contribution" to be made from the fire brigade or fire police fund to the police pension fund.

The Police Act, 1890, is further amended by this Act as regards—

(1.) Suspension of pension, under s. 13 (2).

(2.) Power of investment of pension fund: s. 18.

(3.) Increase of pension granted under special scale applicable for disability.

(4.) Alteration of certain words in Schedule 1 (11) (c), relative to service "in more than one rank." Schedule 4 (11) (c).

PART II.

General Amendment of Acts.

23. Fees.—(1.) Every police authority *may* from time to time and *shall* at least *once in five years* submit to the Secretary of State for approval a table of fees payable to constables in respect of the service of summonses, execution of warrants, and performance of other occasional duties required of them, and in respect of the performance of any other act done by constables in execution of their duty. See H. O. Circular, p. 439, *post*.

(2.) Fees are to be duly accounted for and applied as provided for by enactment, or failing enactment, in aid of police fund.

(3.) A constable may receive any fee mentioned in table approved within five years.

(4.) Constable shall duly account for fees taken.

NOTE.—As to definition of "fee," see s. 34 ; see also s. 16 (1) (c) and (2) (i), as to credit to pension fund, and s. 36 (3) as to table of fees.

24. Amendment re gratuity (Police Act, 1859).—So much of 22 & 23 Vict. c. 32, s. 24, as limits (to 3*l*.) amount of reward to constable for meritorious action is repealed.

25. Police Assistance.—(1.) Under this section a police authority in any emergency can strengthen their force (referred to as the "aided force") by constables of another force, for such period as may be agreed upon under a special agreement made between the two authorities. The constables so added "shall during that period, be deemed, save as otherwise provided by the agreement, to be for all purposes constables of the aided force (*a*), and shall have the like powers, duties and privileges."

(2.) The agreement may be made for a particular occasion (*b*) or as a standing agreement.

(3.) The police authority may delegate to their chief officer the power conferred on them by this section.

(4.) An agreement under this section may contain such terms as to the command of the constables added, and as to the expenses, pay, pension, etc., as may seem expedient (*c*).

(5.) Agreements may be made with more police authorities than one.

(*a*) These words empower the "aiding" constables to act as constables of the "aided force." Without such provision they would have to be sworn in as constables for the aided force, but the words do not operate to make aided authority liable for pensions : 56 J. P. 287.

(*b*) It might be made *by telegram* on an "emergency." See also H. O. Circular, p. 443, *post*.

(*c*) REG. (on pros. of Mayor and Corporation of Rotherham) *v.* THE COUNTY COUNCIL OF THE WEST RIDING OF YORKSHIRE.

Police aid.—Contribution by County Council—Police Act, 1890 (53 & 54 Vict. c. 45), s. 25, sub-s. (1)— Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 24, sub-s. (2) (*j*).

Where for any emergency the police authority of a borough strengthen their police force by constables belonging to another police force the added constables become part of the force of the borough under the Local Government Act of 1888, s. 24 (2) (*j*) and the county council are therefore bound to contribute one half of the cost of the pay and clothing of the constables so aided. L. J. 64 M. C. p. 95.

26. Declaration as to previous service.—A constable on appointment may be required to make a declaration as to previous public service (see Second Schedule of Act). [Penalty incurrable for false declaration.]

27. As to computation of annual value for purpose of metropolitan police.

28.—(1.) As to powers of special constables appointed in the metropolitan police district, such constable to have "all the powers of a constable throughout the whole of the metropolitan police district and the city of London."

(2.) Similarly as to constable appointed by a justice having jurisdiction in the city of London.

29. Provision as to receiver of metropolitan police.

PART III.

Temporary and Supplemental Provisions.

30. Application of Act to existing funds and constables.—For the purpose of adapting the provisions of Act (Part I.) to existing funds and existing constables, viz., to constables appointed and pension funds established before the commencement of Act (*d*), whether under local Act or otherwise, the provisions contained in the following sub-sections shall have effect:—

(1.) Existing pension funds are to be transferred to the proper authorities; to be held and dealt with by them.

(2.) Payment of Exchequer contributions to be deferred until transfer is carried out.

(3) As to dealing with pension fund of a borough, whose police has been consolidated with county, pending the transfer of fund to treasurer; the income to be dealt with by arbitration.

(4.) *Re* pension funds in Lincolnshire.

(5.) After adoption of police pension scale, authorities shall within fourteen days ascertain from constables (in writing) whether they accept the Act or not.

(6.) Saving clause as to "existing" constables who decline to accept the provisions of the Act, "but, save as aforesaid, the Act shall apply to all existing constables."

(7.) Saving clause to prevent loss to existing constable through police authority not having given notice.

(8.) In the case of any "existing constable" (*e*) to whom the Act applies, his approved service for any period before the commencement of this Act in the force *in which he is serving* at the *time of his retirement*, shall be reckoned as approved service; and *his service* for not less than three years, either wholly or partly before the commencement of this Act in any police force in any part of the United Kingdom from which he *removed with the sanction* of the chief officer, or police authority (*f*), of that force

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(*d*) Constables appointed and funds established before April 1st, 1891 (s. 37).

(*e*) Constables joining *after* commencement of Act (April, 1891) may be required to make a declaration (s. 26).

(*f*) See s. 12.

to another force, SHALL (notwithstanding the sanction was not given in writing) *be reckoned as approved service* for the said period in the last-mentioned force, UNLESS the police authority who give him the notice respecting the acceptance of this Act, inform him in writing at the time of such notice that they refuse to allow the said service to be reckoned, but their refusal shall not prevent the reckoning of that service under any other provision of this section. See H. O. Circular, p. 437, *post*.

NOTE.—This sub-section, which is somewhat similar in its provisions to s. 4 (4), is intended as a TEMPORARY measure applicable to constables appointed before April 1st, 1891.

The words "his approved service *for any period* before the commencement of this Act in the force *in which he is serving* at the time of his retirement shall be reckoned as approved service," appear to indicate that service *in the same force*, although it may not have been continuous service, can be counted towards pension, unless the police authority give notice of their refusal to allow it (55 J. P. 13 and 266); but it would appear that previous service in a force other than that from which the constable is retiring, *must extend over three years* with sanctioned removal, before it can be reckoned (56 J. P. 735 and 412; see also 54 J. P. 813).

In order to *entitle* a constable to reckon previous service *as a matter of right*, the Act seems to contemplate that the service should be *continuous*, special provision being made [ss. 4, 5] for unavoidable absence and breaks in service, but the police authority is not under the Act *prohibited* from certifying any previous service in the same force, as approved service, even though terminated by resignation (*g*). "APPROVED SERVICE" is defined under s. 4 as "such service as may after deductions be certified by the police authority to have been diligent and faithful service" (with proviso as to service under twenty-one) (56 J. P. 812; also 57 J. P. 11).

(9.) Any service, police or otherwise, which any "existing constable is at the commencement of this Act entitled to reckon towards pension shall be so reckoned, notwithstanding that it is not reckoned under any other provision of this Act." In case of any "existing" constable who has served for *not less than ten years* before the commencement of this Act in a force where pensions of a *higher amount* than authorized by this Act have been granted, *then*, notwithstanding anything in this Act, the police authority *may*, on retirement, grant a pension of a higher amount than prescribed in scale.

(10.) Provided that in the event of non-payment of any rateable deductions during his service by the constable retiring, the pension so granted may be reduced (sub-s. (9)) by amount equal to such deferred annuities as would, through the post office, have have been purchased by deductions made at rate fixed under Act during the said period (or part period) of service.

31. Local Acts superseded.—The provisions of the Act to supersede any general or local Act.

32. Metropolitan police.—The Act shall apply to metropolitan police, subject to following provisions:—

(1.) and (2.) As to powers of Secretary of State acting as police authority for metropolis.

(*g*) See notes to s. 4 of Act.

(3.) Court of quarter sessions for London to be court of appeal (s. 11 (b)).
(4.) Act not to apply to certain dockyard police.
(5.) *Re* pension of chief and assistant commissioners.
(6.) Certain deductions from salary of commissioners to be paid into Exchequer.
(7.) The existing chief and assistant commissioners to be deemed existing constables within this Act.

33. Police areas and authorities.—The expression "police area" means one of the areas set forth in the first column of Third Schedule to Act; "police authority," "chief officer of police,' and "police fund," are described in second, third, and fourth columns of that schedule respectively: "police force" means a force maintained by one of the authorities mentioned in schedule: Provided as follows:—

(1.) In the case of a county *the powers of the police authority* with respect to sums carried to pension and police funds *shall be exercised by the county council*, and sums payable by the police authority shall be payable by the county council on the requisition of the standing joint committee (*h*).
(2.) Contributions to meet payments to be assessed as contributions to meet police expenses.
(3.) The powers conferred on the watch committee of a borough shall be subject to the approbation of borough council.

34. Definitions.—The expression "treasurer" includes receiver or other officer performing duties of treasurer to any police fund; "fine" includes a pecuniary penalty.

The expression "fee" *does not include a reward* paid to a constable by admiralty or military authority, or Secretary of State not acting as the police authority, *or any gratuity* for a meritorious act done in execution of duty.

35. Saving for existing pensions.—Every person in receipt of any pension, etc., at commencement of this Act, shall continue to receive the same as heretofore.

36. Acts repealed.—The Acts mentioned in Fourth Schedule to Act are repealed to the extent mentioned therein, and so much of any other Act as regulates superannuation of police in England or Wales, or is inconsistent with this Act, is repealed.

Provided that—

(1.) This repeal shall not affect pensions of existing constables.
(2.) This repeal shall not prevent reckoning of service under any repealed enactment.
(3.) Any table of fees in force shall continue in force as if approved at commencement of Act (s. 23).
(4.) (*Fire police.*) Nothing in this section shall repeal any enactment so far as it relates to any fire brigade, fire police (see s. 22 (7)), or other force, to which the provisions of this Act do not apply.

37. Commencement of Act.—April 1st, 1891.

(*h*) See ss. 15 and 18 (2) (3).

38. Short title.—(1.) The Act may be cited as the "Police Act, 1890."

(2.) The Acts mentioned in the Fifth Schedule may be cited as given, and may be cited *collectively* as the "Police (England) Acts."

(3.) The Metropolitan Police Acts and this Act, may be cited as the "Metropolitan Police Acts, 1829 to 1890."

(4.) The Acts mentioned in the said Fifth Schedule and this Act may be cited as the "Police Acts, 1839 to 1890."

39. City Police.—This Act shall not apply to the city of London.

40. Extent of Act.—Not to extend to Scotland or Ireland.

FIRST SCHEDULE.—PENSION SCALE.

Part I.

Ordinary pensions (*i*).—(1.) The pension to a constable on retirement shall be within the maximum and minimum limits.

(a.) If he has completed fifteen but less than twenty-one years' approved service, an annual sum not less than 1-60th nor more than 1-50th of his annual pay for every *completed* year of approved service; and

(b.) If he has completed twenty-one but less than twenty-five years' approved service a sum not less than 20-60ths nor more than 20-50ths of annual pay, *with an addition* of not less than 2-60ths or more than 2-50ths of annual pay for every *completed* year of approved service *above* twenty *years*; and

(c.) If he has completed twenty-five years' approved service, a sum not less than 30-60ths nor more than 31-50ths of annual pay, *with an addition* of not less than 1-60th nor more than 3-50ths of annual pay for every completed year of approved service *above* twenty-five *years*; SO, HOWEVER, THAT THE PENSION SHALL NOT EXCEED TWO-THIRDS OF HIS ANNUAL PAY.

(2.) *Age limit.*—Where a limit of age is fixed below which a constable may not retire without medical certificate, it shall be not less than fifty nor more than fifty-five years for constables and sergeants, nor more than sixty years for officers of higher rank, but it shall not be obligatory to fix any such limit (*k*). See also H. O. Circular, p. 437, *post*.

Part II.

Maximum of Gratuity.—(3.) A gratuity (*l*) to a constable shall not exceed one month's pay for every completed year of service.

Special pensions.—(4.) The pension (*m*) to a constable incapacitated through injury on duty shall vary according to nature of injury (accidental or otherwise) and disablement (total (*n*) or partial).

(*i*) Sections 1, 3, and 4 of Act and Part III. of Schedule.

(*k*) The subsequent alteration of any age limit is tantamount to the introduction of a new scale. See s. 30 (5); 55 J. P. 442.

(*l*) Section 1 (c) and Part III. of Schedule.

(*m*) Section 3 of Act.

(*n*) See now s. 3 of Police Act Amendment Act, 1893.

(5.) The amount of pension shall be at discretion of police authority, but within maximum and minimum limits.

These "special" pensions are arranged under four headings of scales; designated, A., B., C., and D.

The rates of pension attaching to each scale, varying from 1-5th of salary to full pay, are set out under the respective scales enumerated in the schedule.

Scale A. deals with cases of accidental injury and partial disablement.

Scale B.—Cases of accidental injury and total disablement.

Scale C.—Cases of non-accidental injury and *partial* disablement.

Scale D.—Cases of non-accidental injury and *total* disablement.

The latter scale authorizes pension not exceeding full pay and not less than maximum prescribed by Scale C.

Pension and gratuities to widow and children.—(6.) Where a constable dies through injury on duty, the pension to widow (*o*) and allowances to children shall be as follows:—

(a.) Annual pension to widow, 15*l.*

(b.) Annual allowance to each child, 2*l.* 10*s.*

Provided that in the case of a constable of higher rank than a sergeant, the above amounts may be increased, so, however, that the pension for an inspector's widow is not to exceed 25*l.*, nor for the widow of an officer of higher rank 30*l.*, and the allowance for a child of a constable of higher rank than a sergeant is not to exceed 5*l.* per annum.

(7.) *Gratuities* granted to widow and children shall not exceed in the whole the amount of one month's pay for every completed year of approved service of constable.

(8.) The gratuities granted to the widow and children of a constable who dies within twelve months after the grant of a pension shall not exceed in the whole the difference between the annual pay of the constable and the amount he has actually received in respect of his pension.

PART III.

General rules.—(9.) A widow's pension shall continue only while she remains a widow and is of good character.

(10.) The allowance to a child shall cease after fifteen years of age.

(11.) In estimating pension, gratuity, or allowance—

(a.) The pension or gratuity to a constable shall be calculated according to annual pay at date of retirement.

(b.) Pension to widow or allowance to child shall be calculated on constable's amount of pay at date of death.

(c.) But where a constable has (*p*), in the course of the three years next before the date of his retirement or death, been IN MORE THAN ONE RANK (*q*), *his annual pay* at the date of the retirement or death *shall be deemed to be the average annual amount of pay* received by him for the said *three* years *instead of the annual amount actually received* by him at that date.

(*o*) Section 2 of Act and Part III. of Schedule.

(*p*) Amended by Police Act Amendment Act, 1893, s. 6.

(*q*) With reference to the word "rank" see special note on p. 430.

SECOND SCHEDULE.—Declaration (s. 26).

I, A. B., now residing in the parish of in the county of solemnly and sincerely declare that I have [*insert according to the circumstances*] never served in any police force in Great Britain, nor in the Royal Irish Constabulary, nor in the Royal Navy, nor in Her Majesty's Army, nor in the Militia, nor in the Post Office, nor under any public department [*or* that I have served in the police force for years from to and in Her Majesty's Army for years from to and am now in the Army Reserve; but have not served in the Royal Irish Constabulary, nor in the Royal Navy, nor in the Militia, nor under the Post Office, nor under any public department; *or as the case may be*].

Declared before me,
(Signed) A.B.

At the day of 18 .

THIRD SCHEDULE.—Police Areas and Authorities.

In this schedule the expression "county' means an administrative county within the meaning of the Local Government Act, 1888, but does not include a county borough.

Such parts of any county as are within the Metropolitan Police District, or as form part of any other police area, shall not be deemed for the purposes of this Act to form part of the county police area.

Police Area.	Police authority.	Chief Officer of Police.	Police Fund.
The Metropolitan Police District.	One of Her Majesty's principal Secretaries of State.	The commissioner of police of the metropolis.	The funds applicable for defraying the expenses of the metropolitan police force.
A county- - -	The standing joint committee.	The chief constable.	The county fund.
A borough - -	The watch committee.	The chief or head constable.	The borough fund or borough rate or any fund applicable under local Act.

The schedule also defines towns not being a borough maintaining separate police under a local Act, also the river Tyne police.

FOURTH SCHEDULE.—Acts Repealed.

Certain sections (enumerated in schedule) of the following Acts are repealed.—10 Geo. 4, c. 44; 2 & 3 Vict. c. 47; 2 & 3 Vict. c. 71; 3 & 4 Vict. c. 88; 19 & 20 Vict. c. 69; 20 & 21 Vict. c. 64; 22 & 23 Vict. c. 32; 24 & 25 Vict. c. 124; 28 & 29 Vict. c. 35; 45 & 46 Vict. c. 50.

FIFTH SCHEDULE.—THE POLICE (ENGLAND) ACTS.

2 & 3 Vict. c. 93 (County Police Act, 1839); 3 & 4 Vict. c. 88 (Police Act, 1840); 19 & 20 Vict. c. 69 (County and Borough Police Act, 1856); 20 Vict. c. 2 (Police Act, 1857); 22 & 23 Vict. c. 32 (County and Borough Police Act, 1859); 28 & 29 Vict. c. 35 (Police Superannuation Act, 1885).

Sections one hundred and ninety to one hundred and ninety-four (both inclusive) of the Municipal Corporations Act, 1882, shall for the purposes of this Act be deemed to form part of the Acts in this schedule.

POLICE ACT, 1893 (56 VICT. C. 10).

An Act to amend (r) the Police Acts. [9th June, 1893.]

See also Home Office Circular (August, 1893), p. 440, *post.*

Fire duty.—Where a constable belonging to any police force is required to act as a fireman or assist in protecting life or property from fire, such constable shall be deemed for the purposes of the Police Act, 1890, to be in the execution of his duty (s. 1).

The council of a borough may delegate to the watch committee its powers under ss. 32 and 33 of the Town Police Clauses Act, 1847 (or under local Acts), and in such case the watch committee may employ constables wholly or partially as firemen:

Provided that no constable (not so employed at the passing of Act) shall be so employed without his consent.

The pay and allowances of constables so employed shall be defrayed from fund or rate applicable to purposes of fire brigade or fire police.

Pensions and gratuities to such constables, and allowances and gratuities to widows and children shall be paid out of the police pension fund; but the council shall pay from the fund or rate applicable to fire brigade or fire police such contribution to police pension fund as the Secretary of State may determine to be a fair contribution (s. 2).

Where a pension is in pursuance of the Police Act, 1890, granted to a constable on the scale applicable to partial disability, the police authority may, *within three years* from the grant of the pension, if satisfied by medical evidence of practitioner selected by proper authority, that the disability has become total, increase the pension to the amount allowed by the provisions of the scale applicable to total disability (s. 3).

[The section to apply to all pensions granted since the commencement of Act (1890).]

The provisions of s. 13 (2) Police Act, 1890, shall apply to any constable in receipt of a pension who is appointed to any office remunerated out of any parochial, district, or other rate (s. 4). See p. 417.

A police authority, in addition to the powers of investment conferred by s. 18, Police Act, 1890, may invest the capital of the pension fund in debentures or mortgages issued or made by a county council in pursuance of the powers conferred by s. 69 (8) of the Local Government Act, 1888 (s. 5).

In Schedule I. (11) (c) of the Police Act, 1890, for the words "where

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(r) Bills were introduced (sessions of 1897) to further amend the Police Act, 1890, as to pensions, service, appointments, and promotion, but they were withdrawn, July, 1897.

a constable has, in the course of the three years next before the date of his retirement or death, been in more than one rank " shall be substituted the words " where a constable at the date of his retirement or death holds a rank to which he has been promoted within the three years previous " (s. 6).

Act to be read as one with the Police Act, 1890, and powers of Secretary of State, under s. 17 of that Act, not to be diminished (s. 7).

The words " any mischief by fire and " in s. 14 of the Town Police Clauses Act, 1847, are hereby repealed, and this Act shall have effect notwithstanding anything in any other Act, local or general, to the contrary.

Where any local Act or order contains provisions as to a fire brigade or fire police, the Secretary of State may frame and submit to Parliament a provisional order repealing or modifying such provisions so as to bring them into harmony with the provisions of this Act, and he may by such order unite any existing fire brigade pension fund with the police pension fund, and may make any other adjustments which may appear to him to be necessary in order to give effect to this Act (s. 8).

This Act may be cited as the Police Act, 1893; and the Police Acts, 1839 to 1890, and this Act may be cited as Police Acts, 1839 to 1893.

As to "Ranks" in Police Service.

Grades in police rank.—The word " rank," as used in Police Act, 1890, Sch. I., Part III. (c), p. 127, and Police Act, 1893, s. 6, p. 429, appears to be variously interpreted. Practically it seems to be generally considered that there are but *four* ranks, superintendent, inspector, sergeant, and constables; but there are frequently several " grades " in the same rank. The following " illustrative cases," taken from " Practical Points," in " Justice of the Peace," emphasize difficulty experienced :—

1. Grades, etc. *Rank of sergeant.*—A constable promoted to rank of sergeant, of which there are four grades, passes through *two* grades, and serves twelve months in the third grade. Should pension be based on *actual* pay, or on *average?*

" We think the sergeant must be regarded as having served in more ranks than one during the *three* years before his retirement. The *grades are really ranks*, though the title is one and the same " : 55 J. P. 331.

2. Constable retiring after reduction.—A constable during his last three years' service has been reduced from first to second class constable. Pension is calculated on pay of second class constable (*s*). The superannuation committee are advised that the word " rank," in Schedule I., means rank of constable, sergeant, and inspector, but does not for the purposes of a pension include different steps in either rank. What is the meaning of the word " rank " ?

" In answer to a question at page 331 J. P. 55 (*supra*), we expressed an opinion that the *grades* in the rank of sergeant were really *ranks* within the meaning of the schedule. If that is the true construction of the Act, we think the same rule must be held to apply to classes or grades of constables, though the two cases may perhaps, be capable of being distinguished " : 55 J. P. 668.

(*s*) But see now s. 6 of the Police Act, 1893 : the question of pension after *reduction* in rank is now otherwise affected.

3. Classes of superintendents.—A superintendent recently promoted from second to first class retires. Must he have the promotion *three years* before receiving the benefit of his advanced pay on retirement?

"We are still inclined to think that the *classes* in the rank of superintendent must be considered distinct ranks for the purposes of pension, and that the pension must be reckoned upon the three years' average, and not upon the rate of present pay": 55 J. P. 716.

4. Calculation of average pay.—A constable, *nine months* before his retirement, is promoted to the rank of sergeant. In calculating his pension is the average to be taken, or is the pay for the last year to be *apportioned*?

"It seems to us that Rule 11 admits of only one construction—the total pay received by the officer during the *last three years*, divided by three, is to be deemed for the purposes of his pension to be his annual payment at the date of his retirement": 56 J. P. 107.

5. Raising of pay.—The pay of constables was raised without alteration of rank. Can retiring constables claim pension on rate of pay without serving for three years at that rate?

"As there has been no alteration in *rank* of constables (*t*) they are entitled to pension on rate of pay": 55 J. P. 779.

As to Financial Powers, Pensions, etc.

Grants made under the Local Taxation Act, 1890 (*u*), are regulated by s. 17 of the Police Act, 1890, and by s. 15, rateable deductions from pay are to be carried to pension fund, and fines, fees, etc., specified (s. 16).

The audit of the pension fund accounts is to be conducted under the same enactments and regulations as those relating to the police fund (s. 18 (2).) The surplus of the annual income of the pension fund above the expenditure is to be invested (*Ibid.* (3)), and by s. 19, the pension fund is guaranteed out of the police fund. *The capital of the pension fund is not to be applied for paying any sums payable out of that fund* (s. 18 (4).)

Under the Local Government Act, 1888, ss. 28 (2), 81 (2), and 82 (1), the county council may delegate business to committees. They act as a body corporate by virtue of s. 79 (1), and s. 80 provides for the mode of transacting certain financial business.

The standing joint committee of the county council and quarter sessions will act independently, and the exercise of the powers conferred upon them will not require approval either by the council or the quarter sessions (s. 82 (2), and s. 75 (16).)

NOTE.—The county council is to provide for payment out of the county fund of all such expenditure as the standing joint committee determine to be required for the purposes of the matters with which they are authorized to deal (s. 30 (3)). See also H. O. Circulars, pp. 436, 437, 439, *post*.

(*t*) This might equally apply to increases of pay to first class constables under "progressive scale" sanctioned by Secretary of State. See p. 407.

(*u*) These grants are carried to the exchequer contribution accounts of county and county borough funds.

POLICE PROPERTY ACT, 1897.

(60 & 61 Vict. c. 30.)

As to the Disposal of Property in the Possession of the Police.

[6th August, 1897.]

1.—(1.) Where any property has come into the possession of the police in connexion with any criminal charge or under s. 66 of the Metropolitan Police Act, 1839, or 2 & 3 Vict. c. 94, s. 48 (local), for regulating the Police in the city of London, or s. 103, Larceny Act, 1861, or s. 34 of the Pawnbrokers Act, 1872, a court of summary jurisdiction may, on application either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet.

(2.) An order under this section shall not affect the right of any person to take within six months from the date of the order legal proceedings against any person in possession of property so delivered.

(3.) The powers of a court of summary jurisdiction under this section may be exercised by a metropolitan police magistrate.

2.—(1.) A Secretary of State may *make regulations* (*x*) for the disposal of property which has come into the possession of the police under the circumstances mentioned in this Act in cases where the owner of the property has not been ascertained and no order of a competent court has been made with respect thereto.

(2.) The regulations may authorize the sale of any such property, and the application of the proceeds of any such sale, and the application of any money of which the owner cannot be ascertained, to all or any of the following purposes :—

(*a*) the expenses of executing the regulations ;

(*b*) compensation to person delivering over property ;

(*c*) payments for the benefit of discharged prisoners or persons dependent on prisoners ;

(*d*) such other purposes as the Secretary of State may consider expedient.

(3.) Where the property is a perishable article or its custody involves expense or inconvenience it may be sold, but the proceeds are to be held by the police for one year. In any other case the property shall not be sold until it has remained in the possession of the police for a year.

(4.) The regulations may provide for investment of money and audit of accounts.

3. Extent, repeal, and title of Act.

(*x*) Regulations have not as yet (September, 1897) been made.

CIRCULARS OF SECRETARY OF STATE, 1882 TO 1897.

ABBREVIATIONS:—**Qr. S.** = Quarter Sessions; **W. C.** = Watch Committee; **S. J. C.** = Standing Joint Committee.

To whom sent.	Date.	Subject and Page.
Chairmen W. C.	1882	Telegraph wires—injuries to (p. 434).
Chairmen Qr. S. -	1883	Extradition (1).—*Communications* (p. 434).
Chairmen W. C.	1884	Cheap Trains Act.—*Tariff* (p. 434).
Mayors - -	1884	Extradition (2) (p. 434).
Chairmen W. C.	1885	Prisoners in custody (1).—*Illness* (p. 435).
Chairmen Qr. S. -	1885	Disused mine shafts (p. 435).
Town clerks -	1885	Explosives Act (p. 435).
Mayors - -	1886	Extradition (3).—*Accuracy of details* (p. 435).
Chairmen W. C. -	1886	Cheap Trains Act (2).—*Deserters* (p. 435).
Chairmen W. C. -	1887	Gun licences.—*Pistols* (p. 435).
Chairmen W. C. -	1887	Birching youthful offenders (p. 436).
Chairmen W. C. -	1888	Prisoners.—Previous convictions (p. 436).
Clerk of peace -	1889	Local Government Act, 1888 (p. 436).
——	1889	Military deserters (p. 436).
Police authorities	1890	Police Act, 1890.—*Pensions* (p. 437).
Chief constables -	1891	Extradition (4).—*Telegraphing* (p. 438).
Police authorities	1891	Police Act, 1890 (2).—*Fees* (p. 439) (*a*).
Chief constables -	1892	Prisoners in custody (2).—Letters, etc. (p. 440).
Head constables -	1892	Prisoners in custody (3).—*Witnesses* (p. 440).
Police authorities	1893	Police Act, 1893 (p. 440).
Clerk to S. J. C. -	1893	Plans for police stations (p. 442).
Chief constables -	1893	Passenger steamers.—*Overcrowding* (p. 442).
Police authorities	1894	Police aid (p. 443).
Chief constables -	1895	Informations, routes, etc. (p. 443)
Chief constables -	1895	Prisoners in custody (4).—Medical (p. 444).
Chief constables -	1896	Habitual criminals' register (1) (p. 444).
Chairmen W. C. -	1896	Prisoners in custody (5).—*Legal aid* (p. 444).
Chief constables -	1896	Infant life protection (p. 445).
Chief constables -	1896	Re-arrest of discharged prisoners (1) (p. 445).
Chairmen W. C. -	1896	Billet papers (p. 446).
Clerks of peace -	1896	Allowance to police officers (1) (p. 446).
Head constables -	1897	Re-arrest of discharged prisoners (2) (p. 447).
Chief constables -	1897	Allowance to police officers (2) (p. 448).
Mayors - -	1897	Photographing prisoners (p. 448).
Chief constables -	1897	Treatment of first offenders (p. 449).
Chief constables -	1897	Writ of habeas corpus (p. 450).
Chief constables (boroughs).	1897	Naval prisoners (p. 451).
Chief constables -	1897	Habitual criminals' register (2). — *Metric system* (p. 451) (*b*).
To police - -	Various	*Re* Police Returns of Crime (p. 453).

(*a*) See p. 440 (H. O. Circular, 1892), *re* Additional Constables.
(*b*) Also Confidential Circulars, *re* Castings, Explosives, etc., p. 444.

HOME OFFICE CIRCULARS.

A Reprint of Certain circulars issued, 1882 to 1897, is in course of preparation for issue by the authorities. The following is an Epitome of the circulars selected :—

Instruction to constables.—On the formation of police forces, under 2 & 3 Vict. c. 93, in 1839, instructions were issued by the Home Office for the information and guidance of constables then appointed, and these are still extant. These instructions were reprinted October, 1892, and in the reprint of circular now (1897) in course of issue a *resumé* of same is given. The various matters referred to are included under suitable headings in Chapter I. of work and other parts of book.

Protection of telegraph wires (August 31st, 1882).—Referring to Circular of September, 1874, requesting that instructions should be given to the police to use special efforts to check the practice of throwing stones at telegraph wires and insulators. Constables should endeavour to apprehend offenders, and charge them before a magistrate under the Malicious Injury Act or other Act by which such offence is punishable, or report the case to the local postmaster, who will prosecute on behalf of the Postmaster-General.

Extradition (1) (November 6th, 1883).—Calling attention to a Circular issued June 20th, 1881, in which it was requested that in cases in which English criminals have escaped to foreign countries, any communications that may be made by English police to foreign police authorities should be strictly confined to the asking or giving of information, and that all applications for the arrest of fugitives should be made through the Secretary of State for the Home Department, who is charged with carrying out the provisions of the Extradition Act.

Police officers going abroad will obtain from the Secretary of State a letter of introduction for presentation to British Ministers and Consuls.

Cheap Trains Act, 1883 (1) (April 8th, 1884).—*Re* provisions in the Cheap Trains Act, 1883, as to the conveyance of police by railway companies at reduced rates. Section 6, rates of charge, when number is less than 150, *three-fourths* of the fare charged to private passengers ; for number in excess of 150, *one-half*. Baggage, 2*d*. per ton per mile. Police must be travelling on duty on the public service, and produce at the commencement of the journey a route, duly signed.

Extradition (2) (October 25th, 1884).—*Re* complaint that an officer of a county court induced a fugitive to return with him to England as a voluntary prisoner, such conduct being a serious

offence, punishable on conviction with a long term of imprisonment. The Secretary of State desires that officers of police be warned.

Prisoners in custody (1) (March 23rd, 1885).—*Re* cases in which persons have been committed to prison while in a moribund condition or suffering from serious disease; when any prisoner shows symptoms of illness he should be medically examined, and a report as to his state of health should be submitted to the magistrate.

In extreme cases, where the medical man thinks it would involve risk to life or health to bring the prisoner before the magistrates, or to detain him in the cells, it may be necessary to remove him at once to a hospital or infirmary.

Disused mine shafts (May 14th, 1885).—Intimating desirability of police in Great Britain and Ireland notifying any instances of unfenced or insecurely fenced old mine shafts, such notification to be sent to the Home Office.

Explosives Act, 1875 (September 1st, 1885).—*Re* new Order in Council (No. 7 (*b*), dated August 12th, 1885).

The Order removes the special disabilities which have hitherto attached to the keeping of Schultze gunpowder, E. C. powder, and other small-arm nitro-compounds.

No alteration is made as regards premises on which any other explosive (such as dynamite, gun-cotton, or fireworks) is kept.

Extradition (3) (February 2nd, 1886).—Calling attention to the great importance of care and accuracy in preparing the information and warrant for the surrender of a fugitive from justice.

If copies of the warrant and information are sent instead of the originals, such copies should be duly authenticated and certified.

The offence stated in the warrant should be set forth in the terms of the treaty.

Cheap Trains Act, 1883 (2) (June 7th, 1886).—*Re* Circular of April, 1884 (Cheap Trains Act, 1883). The railway authorities in Great Britain have expressed their willingness to charge the reduced fares prescribed by the Act for naval and military deserters when travelling under the escort of the police, on the condition that the number of the deserters who so travel is stated on the warrant.

The words "naval or military prisoners at three-fourths of the ordinary fares" should be inserted in warrant.

Gun Licence Act, 1870 (August 8th, 1887).—As to evasion of provisions of Gun Licence Act, 1870, by persons owning and carrying pistols.

Secretary of State suggests that police be instructed to report regularly to their superior officers all cases of unlicensed pistol carrying which come under their notice in the execution of their duties as police; and that such reports be regularly communicated to the Inland Revenue Authorities, in conformity with practice already existing in certain forces.

Birching of youthful offenders (August 29th, 1887).—*Re* birching youthful offenders. Owing to differences in age and constitution, the effect of this punishment must necessarily vary ; in some instances it may operate with excessive severity.

With the view of preventing such consequences, the Secretary of State suggests that the rod used for birching children under ten should be lighter than that used in the case of older offenders ; and that in case of child in delicate health, a medical man should be consulted as to propriety of punishment.

Prisoners' previous convictions (February 3rd, 1888).—Requesting (in order to assist governors of prisons in preparing calendars of prisoners) that police would communicate at once to governors of prisons what they know of the previous convictions of prisoners committed for trial.

The information should be given *at the time the prisoner is committed.*

Suitable forms may be obtained by the police from prison governors.

Local Government Act, 1888 (January 17th, 1889).—Indicating that, as no direct Government contribution will hereafter be made in aid of local police expenditure, it will no longer be necessary for the local police authorities to submit, for the Secretary of State's approval, proposals involving increase of costs, with a view to providing for the increased charge in the estimates.

The instructions in the circulars of March 24th, 1876, October 16th, 1877, and February 18th, 1878, are, therefore, no longer in force.

The Secretary of State's sanction, however, is still required—

(1.) For any alteration of the *number of constables* in a county police force : 2 & 3 Vict. c. 93, s. 2.

(2.) For any alteration in the *number of superintendents*, and in the other ranks of officers : 3 & 4 Vict. c. 88, s. 26.

(3.) For any alteration in the number of constables in any district of a *county divided into police districts* under 3 & 4 Vict. c. 88, s. 27.

The rates of pay of county constabulary will continue subject to the rules of April 12th, 1886, made under 2 & 3 Vict. c. 93, s. 3 ; and the Secretary of State's *sanction will be required for any rates of pay* exceeding the scales mentioned in these rules.

Military Deserters (December 4th, 1889).—*Re* charges for the subsistence of military deserters when confined in police cells. Such charges, whether incurred before or after the examination before a magistrate, are to be sent to the War Office for adjustment, instead of being defrayed, as now, by the military escorts sent to remove deserters from civil custody.

It is hoped that this alteration in the mode of payment will save trouble to local authorities as well as to the War Office.

Police Act, 1890. — (1) Adoption of Pension Scale, etc. (October 7th, 1890).—Calling attention to some of the provisions of the Police Act, 1890.

I. The first duty imposed by the Act is that of adopting *a scale for ordinary pensions.*

The Act provides for two classes of pensions, *ordinary* pensions and *special* pensions, the latter being the pensions granted for incapacity arising from injuries received in execution of duty.

For *ordinary* pensions a fixed scale has to be adopted by each police authority within certain maximum and minimum limits which are prescribed in the Act. For *special* pensions the Act itself prescribed scales having maximum and minimum limits.

In settling the scale for ordinary pensions, two conditions have to be borne in mind :—

(1.) The scale must be a fixed one.

(2.) It must be within the maximum and minimum limits prescribed in Schedule 1, Part I.

The limits are tabulated. After 15 years approved service a minimum of 15-60ths and maximum of 15-50ths of actual pay, with yearly increments of minimum 1-60th, maximum 1-30th, up to twenty years' service, when annual increment doubles up to twenty-five years' service.

After twenty-five years' service the minimum is 31-60ths (with annual increment) and maximum 2-3rds rate of annual pay up to 35 years' service, when the minimum of 40 60ths and maximum 2-3rds equalize.

II. In adopting the scale of pensions, the police authority should also consider whether a *limit of age* is to be adopted for pensions granted without medical certificate. The Act fixes a limit of service for such pensions, viz., twenty-five years (s. 1 (*a*)), but leaves it to the discretion of the police authority whether or not a limit of age is also to be prescribed. If no limit is prescribed, the constable is entitled to a pension without medical certificate after twenty-five years' service, whatever may be his age.

Where a limit of age is fixed, it must not be less in any case than fifty, and it must not be more than fifty-five for officers of the rank of constable or sergeant, nor more than sixty for officers of higher rank (Schedule 1, Part I. (2)). It must be a fixed limit, not variable in each case at the discretion of the authority, but it may be different for different ranks.

III. When a pension scale has been adopted, the police authority is required (s. 30 (5)) to give written notice to every constable in the police force.

By s. 30 (8) a constable is entitled to reckon, for purposes of superannuation, previous service in any other police force in the United Kingdom if such service was for a period of three years or upwards, and if his transfer took place with the approval of the chief officer or police authority of the force from which he removed, unless the police authority give written notice to the constable that they refuse to allow such service to be reckoned.

IV. Attention is also called to the provisions of s. 20 of the Act, empowering a police authority to "make regulations with respect to deductions from service for sickness, misconduct, or neglect of duty, and with respect to stoppages of pay during sickness and fines for misconduct." Such regulations, if made before the commencement of the Act, take effect as if made under the Act.

These regulations may have an important bearing on the amount of pensions.

V. As regards service after the commencement of the Act the expression "approved service" will not include service before twenty-one years of age unless the regulations of the police force otherwise prescribe (s. 4 (1) and s. 30 (9)).

VI. The attention of the police authority is called to the provisions relating to the superannuation fund, ss. 16, 18, 19, and 30 (1) (2) (3).

And especially in the case of police force where there is a common superannuation fund for the police force and any fire brigade, fire police, or other like force (s. 22 (3)).

Extradition (4) (June 9th, 1891).—In circular letter dated April 21st, 1890, forwarding memoranda *re* extradition, special attention was called to the third paragraph of memoranda, viz :—

"The application for the surrender of a fugitive criminal from a foreign country must be addressed by the prosecutor or the police to the Secretary of State for the Home Department, who will communicate, through the Foreign Office and the proper diplomatic channels, with the authorities of the place where the fugitive is supposed to be."

"*The chief officers of English police forces may communicate direct with the police of foreign countries for the purpose of giving or obtaining information, but under no circumstances should direct application be made to foreign police for the arrest of a fugitive. Serious difficulties have arisen in cases where this direction has been overlooked.*"

"Where the apprehension of a fugitive is a matter of urgency the Secretary of State will apply by telegram for his provisional arrest in anticipation of the formal demand for surrender."

Attention had already been called to the same point in Circulars of June 20th, 1881, and November 6th, 1883.

The Secretary of State regrets to find that notwithstanding these repeated instructions, cases have occurred in which chief officers of police have made direct application to the police or judicial authorities of other countries for the arrest of fugitive criminals; and he is compelled once more to call attention to the matter, and to state that the rule against direct applications to foreign police is one which in ordinary circumstances can admit of no exceptions; and that any officer of police who hereafter disregards it will incur the severest censure.

[A reply to the letter was requested intimating that the matter had been brought to the notice of all officers.]

Military Deserters (December 7th, 1891).—By the provisions of the Police Act, 1890, the doubts which formerly existed as to whether police constables were entitled to receive for their own use the

rewards given by the War Office for the apprehension of deserters have been removed. By s. 34 of that Act the word "fee" is so defined as to exclude "rewards paid to an individual constable by direction of any military authority," and these rewards do not therefore come within the provisions of the Act under which fees received by constables for acts done in the execution of their duty are payable to the police fund (s. 23, sub-s. (2)) or to the pension fund (s. 16, sub-s. (2) (i.)).

In the opinion of the Secretary of State for War these rewards should be given to the police individually as a recognition of their services in apprehending soldiers who are illegally absent.

"As regards the amount of the reward, the recommendation should be based on the degree of trouble taken and intelligence shown in the apprehension of a deserter; and the subjoined scale has been suggested by the Secretary of State for War for the assistance of Magistrates.

1. When soldiers are apprehended in uniform, near their quarters, it is considered that, as a general rule, 5*s.* is sufficient reward. Not more than 10*s.* will be allowed in any case where the soldiers are in uniform.
2. If they have been taken into custody at a distance, and after being absent from their regiments for any length of time, the reward may be increased to 10*s.* or 15*s.* according to the nature of the cases, and the trouble incurred in apprehension.
3. The reward of 20*s.* should be reserved for cases where superior intelligence had been displayed in apprehending men in plain clothes and under difficult circumstances."

Police Act, 1890 (2).—Fees (December 10th, 1891).—Attention is called to s. 23 of the Police Act, 1890, which provides as follows :—

> "Every police authority may from time to time, and shall at least once in every five years, submit for approval to a Secretary of State a table of fees payable to constables in respect of the service of summonses, the execution of warrants, and the performance of other occasional duties which may be required of the constables under that authority, and in respect of the performance of any other act done by constables in the execution of their duty, and the Secretary of State may approve of the table, with or without modification."

Difficulties having arisen with regard to the framing of tables of fees under this section, the Secretary of State desires to bring to the notice of police authorities the following points :—

The section only empowers police authorities to fix tables of *fees;* it is *ultra vires* to insert any provision as to payment of expenses.

Any provision in the table to the effect that any service for which a fee is payable is not be rendered until the fee is paid would be *ultra vires.*

Police authorities in framing the tables should either not impose any fees for duties performed by the police in *criminal cases* (summonses, warrants, etc.) or should make the fees for these services very small in amount. The sums usually payable for justices' clerks' fees are already sufficiently heavy, and it is undesirable to increase them by the addition of police fees.

The table under s. 23 should not contain the charges made to private persons or public bodies for constables whose services are lent to them in consideration of payment. These services will not be paid by fees, but will be charged for by the police authority at rates fixed with reference to the cost of the pay, clothing, etc., of the police employed and including a fair contribution to the pension fund (Police Act, s. 16 (1)(e)).

[**Additional constables** (1892).—*An important memoranda dealing with "additional" constables and percentage to be charged to employer for superannuation purposes* (20 *per cent.*) *was issued January*, 1892.]

Prisoners in custody (2) (June 27th, 1892).—Any person arrested by the police on suspicion and remaining in police custody is to be allowed immediate and ample facilities for communication with his friends or legal advisers. Such person should be supplied on his request with writing materials, and his letters dispatched with the least possible delay, or telegrams (at prisoner's expense) (*a*).

Prisoners in custody (3) (July 4th, 1892).—Complaints having been made by prisoners awaiting trial that their case has been prejudiced by the absence of witnesses in their favour, governors of prisons have been instructed to ask all undefended prisoners whether they wish to summon any witnesses for their defence, to forward letters and afford facilities in accordance with notice placed in cells. Police are to assist in securing the attendance of any witness whose presence may be desired by a prisoner. If it be found impossible to communicate with witness, the governor of the prison is to be informed. But the police have no power to enforce the attendance of witnesses or to pay expenses, and are therefore in no way responsible for the production of witnesses; but they should assist in procuring the attendance of witnesses for the defence who might otherwise be unlikely to give evidence.

Police Act, 1893 (August 5th, 1893).—Explaining provisions.

Section 1.—The section distinguishes between a police constable who *acts as a fireman* and a police constable who merely *assists* in the extinguishment of fire or in protecting life and property from fire. The power to employ a constable as a fireman is given in s. 2 of the Act, and only applies to boroughs, but all county and borough police authorities have, under s. 7 of the County and Borough Police Act, 1856, an authority to direct constables to assist in the extinction of fires; and, with a view to securing pensions to constables so employed, it is in the opinion of the Secretary of State desirable that police authorities should issue directions on this subject where none exist, and where such directions have already been issued, that they should now re-consider and, if necessary, revise them.

Section 2.—The section provides for the case where the council of a borough desire, not merely to employ police casually in assisting in

(*a*) Foreigners can communicate with their Embassy, Legation, or Consular Officer.

the extinction of fires, but to constitute a part of the police force a regular fire brigade. When this is to be the arrangement, it is desirable that the whole police force, whether employed on police duty or on fire duty, should be under one direction and control Where, therefore, a borough council desires to put in operation the powers given by this section, it does so by a resolution delegating its own powers with regard to the fire brigade to the Watch Committee. When this resolution has been passed, constables employed as firemen, whether for the whole or for part only of their time, are placed as regards pensions in exactly the same position as other constables.

In order to prevent loss to the pension fund through new provisions, the section provides for a contribution being made annually to the pension fund from the rate or fund applicable to the purposes of the fire brigade. The amount of this contribution is to be determined by the Secretary of State either by general or special order.

Section 3.—This section corrects an omission in the Police Act, 1890. By the present section a police authority is empowered to increase pension if within three years from the grant of pension for partial disablement the disablement becomes total.

The section applies to all pensions granted since the commencement of the Act of 1890, *i.e.*, since April 1st, 1891.

Section 4.—This section supplies an omission in s. 13, sub-s. (2) of the Act of 1890. The sub-section as amended will read as follows :—

"If a constable in receipt of a pension under this Act is appointed to an office remunerated out of money provided by Parliament, or out of a county or borough rate or fund, *or out of any parochial, district or other rate*, he shall not, while holding that office, receive more of the pension than together with the remuneration of that office is equal to one and a half times the remuneration of the office in respect of which the pension was awarded."

Section 5.—This section extends the powers of investment of the capital of the pension fund conferred by s. 18 of the Act of 1890.

Section 6.—This section corrects a mistake in the rule for the calculation of pensions and gratuities which was prescribed in Schedule I. of the Police Act, 1890.

The rule was framed to include an officer *promoted* ; but the paragraph was so worded as to include the case of an officer *degraded*, and a case occurred which necessitated the alteration. A case having occurred in which a superintendent reduced to a constable immediately retired on the pension of a superintendent (having twenty-five years' service), the law has been altered, and paragraph 11 of the First Schedule to the Police Act, 1890, as amended by this section, will read as follows :—

"In estimating any pension, gratuity, or allowance for the purposes of this Act,—

(a) a pension or gratuity to a constable shall be calculated according to the amount of his annual pay at the date of his retirement;

"(b) a pension or gratuity to the widow, and an allowance or gratuity to a child of a constable, shall be calculated according to the amount of the constable's annual amount of pay at the date of his death;

"(c) but where a constable at *the date of his retirement or death holds an appointment to which he has been promoted within the three years previous*, his annual pay at the date of retirement or death shall be deemed to be the average annual amount of pay received by him for the said three years, instead of the annual amount actually received by him at that date."

In connection with s. 5 of Act, it will be remembered that before the Exchequer contribution to the pension fund can be paid, the Secretary of State must give a certificate that the "administration of the pension fund" during the past year has been "satisfactory." (Police Act, 1890, s. 17 (2).) The Secretary of State before giving this certificate requires to be satisfied amongst other things of the proper investment of the capital of the fund.

The points to be borne in mind are set out in circular.

Plans for police stations (October 5th, 1893).—With a view to expedite the consideration of the plans of new police stations and of alterations in existing stations which are submitted for sanction in pursuance of s. 12 of the County Police Act, 1840.

The Secretary of State has authorized the Surveyor General of Prisons (who advises him in the matter) to correspond directly with the standing joint committee on those details of plans which require alteration or amendment.

Plans submitted can in future be sent direct to the "Surveyor General of Prisons, Home Office, Whitehall," who, after arranging with the committee or its officers any amendments that are necessary, will submit the plans for the Secretary of State's approval.

The letter forwarding the plans should state whether or not a loan is required. If this is proposed, the application to the Local Government Board to sanction the loan should be made when the plans are sent to the Surveyor General. The Board usually send an inspector to make a local inquiry as to site, drainage, etc., and when this is done, the report must be received before the plans can be considered.

Passenger steamers (October 24th, 1893).—Complaints having been made as to overcrowding on passenger steamers, police authorities are reminded that all possible steps should be taken to prevent such overcrowding, and that proceedings should be instituted against the owners or masters of vessels if necessary.

Sections 319, 518, 520 of the Merchant Shipping Act, 1854, bear upon this question.

Under s. 319, the owner or master of steamer is liable to fine of 20*l.* for carrying passengers in excess of number allowed by certificate and also an additional penalty of 5*s.* for every passenger

over and above number authorized or double the amount of fares paid by excess passengers.

Under s. 518 (3) proceedings can be taken summarily where penalty does not exceed 100*l*.

Section 520 as to venue.

The Secretary of State is advised that these sections apply equally to sea-going steamers and to those that ply on inland waters.

The overcrowding of passenger steamers appears to be a matter of even greater importance and requiring more vigilant action on the part of the police than the overcrowding of stage carriages on land, inasmuch as greater danger to life is involved.

The Board of Trade will on application being made to them supply certified copies of the passenger certificates of any vessel.

Aid lent by one police force to another (July 12th, 1894).—A desire having been generally expressed that model forms for agreements made under s. 25 of the Police Act, 1890, should be issued by the Home Office, two such forms have been prepared and issued: One (Form A) is intended to be used when the aiding authority requires the actual expenditure incurred by it to be reimbursed; another (Form B) when the aiding authority charges certain fixed rates.

The contribution to be made to the pension fund in respect of each lent constable [Police Act, 1890, s. 16 (i.) (c)], which in Form B has been placed in the schedule of charges, has in Form A been fixed at ten per cent. of the pay of each constable. The amount can be varied, but attention is directed to the provision in s. 5 that the aided authority shall contribute to special pensions granted to any of the lent constables employed in its service.

Some other alterations in detail may be found necessary to adapt the forms to the circumstances of particular forces.

[Copies of forms were forwarded with Circular.]

Informations, route forms, etc. (February 6th, 1895.)—Referring to the circulation of route forms regarding the antecedents of persons already in custody, requests for the arrest of persons against whom warrants have been issued, and other similar notices sent by one police force to another, it is suggested that not one notice only be sent but a sufficiency for general circulation required.

The circulation of notices which are not likely to lead to any good result, such as "route forms" without photographs or any definite particulars, is to be avoided.

Attention is called to the desirability of sending an intimation of the arrest of an offender to such police forces as have been previously requested to arrest him.

In communicating with the metropolitan police, three copies of all informations, circulars, notices, or descriptive bills, and two copies of all route forms, either with or without photographs, should be forwarded.

Prisoners in custody (4).—(*For police circulation* (*a*) *only.*)—(February 18th, 1895.)—Drawing attention to subject of medical examination of prisoners arrested on charge of rape, indecent assault, or other sexual offences. The procedure adopted by police of metropolis is set out and recommended. An examination should never be made without the prisoner's affirmative consent. A qualified medical man can attend on his behalf if he desire it.

The desirability of the appointment in every force of recognized police surgeons is advocated.

Habitual criminals registry (1) (January 18th, 1896).—Notifying the transfer of the Habitual Criminals Registry from the Home Office to New Scotland Yard. Communications and inquiries to be addressed to the Registrar of Habitual Criminals, New Scotland Yard, London, S.W. Printed lists containing names and particulars of prisoners are obtainable. Chief officers of police are urged to consult the registrar, and to utilize, as much as possible, the information collected.

Prisoners in custody (5) (February 7th, 1896).—As to diversity of practice *re* interviews between remanded prisoners and their legal advisers. When persons are remanded in prison, they are uniformly allowed, like other prisoners, to have interviews with barristers or solicitors on *bonâ fide* legal business, of whatever nature, in sight of, but out of hearing of a warder; and it seems manifestly desirable that the same privilege should not be denied them when they are remanded to police cells. But the Secretary of State understands that in practice such interviews are sometimes not permitted by the police.

The Metropolitan Police have instructions to allow such interviews with all prisoners in their custody, and the Secretary of State is very strongly of opinion that the same practice should be followed elsewhere.

It is suggested that instructions be given police to prevent persons in their custody being deprived of such legal assistance as they may desire to have for their defence, or for any other legitimate purpose. It is no doubt desirable in most, if not in all instances, that the interview should take place in the sight of a police officer, but to require it to take place also in his hearing, appears to be unnecessary in the interests of justice, and therefore undesirable except in rare instances and for very grave reasons.

It will, of course, be understood that such interviews between a prisoner and his solicitor are only allowed for the transaction of *bonâ fide* legal business. The same principle should be applied to written communications between a prisoner and his legal adviser; that is to say, *bonâ fide* instructions in writing to a solicitor should be allowed to pass without inspection by the police.

(*a*) Confidential circulars *re* "castings" (October, 1892, impressions of footprints, purchase of explosive materials, etc., have also been issued (December, 1892; July, 1894).

Infant life protection (July, 1896).—As to best means of protecting children who are transferred by their parents to the care of other persons, and preventing what is known as baby farming. A number of cases which have come to the notice of the Home Office (particularly that of Elizabeth Dyer) indicate that the Act of 1872 has not secured the results which were expected by Parliament. Some of the difficulties which have been experienced might be got over to a great extent by a hearty co-operation between the borough or district council, acting as the local authority, and the police, who have exceptional facilities for acquiring information, and for detecting infringements of the Act. Chief officers should confer with the different local authorities in the county on the subject, and come to some agreement with them as to the action to be taken in the matter. Attention is particularly directed to the advertisements of baby farmers (such as those by means of which Elizabeth Dyer seems chiefly to have obtained the children entrusted to her), which appear for the most part in the local papers, and act as incentives to mothers to part with their children.

Re-arrest of prisoners on discharge (1) (August 20th, 1896).—*Re* the difficulties caused to police and the hardships sometimes occasioned to prisoners in cases where a prisoner convicted of some offence of dishonesty against whom warrants have been obtained by various police forces on charges of a precisely similar nature is re-arrested. It appears to the Secretary of State highly undesirable that a prisoner should be repeatedly re-arrested at the prison gates, and Her Majesty's judges have expressed a similar opinion.

The matter has been laid before the Lord Chief Justice and the Council of Judges, and while the difficulty is one which cannot be finally or completely removed without legislation it might be materially lightened by administrative action.

It is urged that whenever a prisoner is to be tried for an offence committed either prior to or in connection with another offence of a similar nature for which he has already suffered punishment, the fact may always be brought to the notice of the court by whom, in the event of conviction, judgment will be passed; and further that any remarks which may have been made by the court before whom the earlier case was tried may also be brought, if possible, to the notice of the judge who hears the later case.

Where there is a question of proceeding against a man who is already undergoing imprisonment there are in some cases advantages in proceeding by means of a writ of *habeas corpus ad respondendum*, obtained by application on affidavit to a judge in chambers, and so procuring the production of the accused before the court by whom the fresh charges are cognizable during the currency of his sentence, instead of waiting till the expiration of the prisoner's sentence and re-arresting him on discharge.

In the former case the facts are likely to be fresher in the witnesses' minds, and there would probably be less difficulty in obtaining

sufficient evidence to secure a conviction. At the same time the prisoner would be spared the period of waiting for trial which the ordinary course frequently involves, and would also be rid of the uncertainty as to whether he will be free at the expiration of the sentence which he is undergoing, or will be held to stand his trial again. Moreover, when a prisoner is brought up for trial on a writ of *habeas corpus*, the fact of his having been already sentenced to one term of imprisonment is necessarily brought home to the mind of the judge, and the exact apportionment of the due amount of punishment is rendered easy. And further, procedure by means of *habeas corpus* is likely to prevent any difficulty occurring in cases where warrants have been issued in different jurisdictions for a prisoner's arrest and the question arises which of them is to be executed first.

On the other hand, in some cases it might be oppressive to proceed against a prisoner during the currency of a sentence passed on him.

It is impossible to lay down any general rule on the subject, but the matter should be considered with the view of deciding whether the re-arrest of a prisoner on the expiration of a sentence of imprisonment may not sometimes be rendered unnecessary by proceeding in the manner indicated.

Billet papers (September 21st, 1896).—It appears that obsolete forms of Billet Paper are sometimes used by police officers in arranging for the billeting of soldiers, and that inconvenience consequently arises from the want of a clear understanding as to the Schedule of payments and meals to be provided under the existing law.

A specimen of the latest form of Billet Paper can be obtained from the governments printers, 52, Long Acre, London ; if any forms of earlier date are in use by constables, the obsolete forms should be destroyed and copies of the latest edition should be obtained in place of them.

Allowances to police officers travelling to prove previous convictions (1) (September 25th, 1896).—As to the sufficiency of the scale of allowances applicable to the case of constables attending at courts to give evidence of previous convictions where the allowance is insufficient to defray expenses involved. Unless the officer is to suffer pecuniary loss, the difference between his actual expenses and the amount received must be made good either by the force to which he belongs or by the force which has summoned him as a witness. The first of these alternatives appears to be manifestly unfair ; it is a sufficient sacrifice for a police force to be deprived for a period of one of its paid officers, without having to defray part of his travelling and lodging expenses from their own funds.

Neither does it seem altogether right that the second alternative should be adopted, the effect of which is that the court allowances, from which a witness's expenses should be paid, require to be supplemented from police funds.

The Secretary of State, exercising the power vested in him by statute, has accordingly issued an order fixing the allowance to be paid to police officers in the circumstances in question at an amount not exceeding that to which such officers would be entitled by the regulations of their force had they been absent on the service of their force.

A witness claiming such an allowance should produce a certificate from a superior officer of the scale of allowances, to which he is ordinarily entitled when absent on duty.

Order of the Secretary of State governing the Allowances to Witnesses in Criminal Prosecutions.

I, the Right Honourable Sir Matthew White Ridley, one of Her Majesty's Principal Secretaries of State, do, in pursuance of the powers vested in me by s. 5 of the Act 14 & 15 Vict. c. 55, make the following regulations respecting the costs, expenses, and compensations to be allowed to witnesses in criminal prosecutions :—

To every witness, being a constable paid by salary, who shall attend any court of assize, oyer and terminer, gaol delivery, general sessions of the peace or other similar court for the purpose of giving evidence of a previous conviction charged against a prisoner, and who shall have been necessarily absent from home for one night or more for that purpose, there may be allowed a sum not exceeding the amount which he would be entitled to receive under the regulations of the police force of which he is a member for a like absence upon duty, and in addition a sum for travelling expenses not exceeding that to which he would be entitled by the regulations of his force for a like journey undertaken in the service of that force.

Given under my hand at Whitehall, this 7th day of September, 1896.

M. W. Ridley.

Re-arrest of prisoners on discharge (2) (January 1st, 1897).—As to difficulties which have from time to time arisen in cases where a prisoner is in custody and two or more warrants are held by different police forces for his re-arrest on discharge.

In these cases the question arises as to which warrant is to take precedence, and in the absence of any recognised principle in the matter, there is clearly a danger of a dispute arising between the forces, which in an extreme case might lead to unseemly proceedings at the prison gates. The Secretary of State has no authority to issue any binding rule, but is of opinion that the most convenient practice is that, apart from special circumstances, the warrant that has been issued first, should be executed first. The governors of prisons have of course no responsibility in the matter of the arrest of prisoners at the expiration of a term of imprisonment, but they are always ready to assist the police by intimating the time when a prisoner will be discharged ; and instructions have now been given them that when they have sent such an intimation to one force holding a warrant against a prisoner and are subsequently informed by another force of

another warrant which it is proposed to execute against the same prisoner, they should send notice of this to the first mentioned force in order that the two police authorities should settle between themselves which warrant is first to be executed, and this may of course depend on a variety of considerations, but where there is no special reason to the contrary the warrant first issued should be first executed, and this should be accepted as a rule of practice in the event of dispute between two authorities.

It will be convenient to give date of issue of any warrant when sending notice to the governor of a prison.

Allowances to police officers travelling to prove previous convictions (2) (March 8th, 1897).—Consequent on misapprehension existing with regard to the meaning and intention of the Order under s. 5 of 14 & 15 Vict. c. 55 (see Circular Letter dated September 25th, 1895), relating to allowances payable to constables attending courts to prove previous convictions, it appears desirable to give some further explanation for information and guidance of police.

It was not intended that special scales should be drawn up by the several police authorities for constables coming within the terms of the Order. It was expressly suggested that a constable should be furnished with evidence of the amount he would *ordinarily* receive from his own force for a like absence on duty. If the amount claimed under the Order appears unreasonably high, the officer by whom the amount of costs payable to witnesses is determined can either fix a smaller amount or disallow the claim altogether, in which case the balance payable to the constable must be defrayed from the funds of the force to which he belongs.

It is most necessary that cordial co-operation exist between police forces in the matter of proving previous convictions. Assistance of this nature should be given readily by one force to another, and even if the allowance fall short, no application for re-imbursement should be made to the force at whose request the duty was undertaken.

Photographing and measuring of prisoners (March 15th, 1897).—Regulations have been made under s. 8 of the Penal Servitude Act, 1891, as to the photographing and measuring of criminal prisoners. These regulations are framed to give effect to the recommendations of a committee which reported to the Secretary of State in 1894 [C. 7263]. It is intended, therefore, that these new powers should be used only in relation to persons who are considered habitual criminals, and definite restrictions have been placed upon their operation in the case of untried prisoners. This is dealt with by regulations 4 and 5 (*a*). The other regulations are for the guidance of the prison authorities.

When a prison governor receives an application from any police force duly approved under these regulations, it will be his duty to

(*a*) Copies accompanied circular.

take the required photograph and measurements forthwith, and to forward them to the Registrar of Habitual Criminals, New Scotland Yard. The registrar will thereupon make the necessary search to ascertain whether the prisoner in question is already on his register, and will communicate the result to the police force in question.

Local authorities should exercise adequate discretion in making applications under regulation 4, as the undue use of the powers conferred might prejudice the working of the entire system.

Regulations made by the Secretary of State under the Penal Servitude Act, 1891, *s.* 8, *for the measuring and photographing of prisoners.*—An untried criminal prisoner shall not be photographed or measured while in prison save by order of the Secretary of State or upon an application in writing signed by an officer of police of not lower rank than superintendent, and approved by a justice of the peace, or in the metropolitan police district by the Commissioner or Assistant-Commissioner of Police, and all such applications shall set forth that from the character of the offence with which the prisoner is charged or for other reasons, there are grounds for suspecting that he has been previously convicted, or has been engaged in crime, or that from any other cause his photograph and measurements are required for the purposes of justice.

When an untried prisoner who has not been previously convicted of crime shall have been photographed and measured under the preceding regulation, if he be discharged by the magistrate or acquitted upon his trial, all photographs (both negatives and copies), finger print impressions, and records of measurements so taken, shall be forthwith destroyed or handed over to the prisoner.

Treatment of first offenders in prison (April 9th, 1897).—An attempt has been made by the Prison Commissioners to keep first offenders sentenced to three months' imprisonment or upwards separate from other prisoners, for the purpose of constituting a class similar to the "star class" which for some years has been established for convicts under sentence of penal servitude.

As this object would be defeated if all prisoners convicted for the first time were classed indiscriminately together, it has been necessary (i) to exclude altogether from consideration persons convicted of receiving stolen goods, of unnatural offences, or of rape attended with aggravating circumstances; (ii) to bar claims to be placed in the "star class" from being put forward as of right by prisoners of any kind; and (iii) to inquire into the antecedents of all prisoners convicted for the first time and sentenced to three months or more, except those convicted of the above-mentioned offences, with a view of ascertaining whether they can properly be placed in the "star class."

The success of this system in London has been sufficient to justify an extension of it to other districts, and to all prisoners sentenced for the first time for whatever term.

In London, whenever a first offender is committed to prison on a charge instituted by the police, the divisional number and letter of the officer in charge of the case will in future be noted on the

back of the commitment warrant, so as to facilitate reference to him when necessary, and there will also be a supply of forms at the court to be filled in by officers.

Similarly, in other districts, the governors of prisons will supply forms for the purpose of transmitting the information required. It is desirable that the police should assist the prisons authorities in obtaining the information required.

Exhaustive and lengthy inquiry is not required. Knowledge is sought as to the prisoner's general character, his friends and associates, and the names and addresses of any respectable persons who can give information concerning him.

Writ of habeas corpus ad respondendum (May 1st, 1897).—With reference to circular letter dated August 20th, 1896, the Director of Public Prosecutions will be prepared on receiving an application to obtain the necessary writ of habeas corpus ad respondendum in cases where action has to be taken.

In each case an affidavit must be forwarded setting forth the grounds on which the issue of the writ is desired, which can be used by the Director of Public Prosecutions in making the necessary application to a judge in chambers. The affidavit should depose to the following particulars:—

Name of prisoner with prison, cause of detention, and sentence.

Nature of charge made against prisoner in respect of which a warrant against him is in the hands of the police and on which it is desired to bring him before a justice.

Date, place, and before whom the charge is to be heard.

Three or four days at least should be allowed within which to enable the writ to be issued and returned for service.

A. 57747. (DRAFT FORM).
24.

In the High Court of Justice.

QUEEN'S BENCH DIVISION,

I,

make oath and say as follows:—

1. That a Warrant has been issued against one who is now a prisoner in Her Majesty's Prison at undergoing a term of for

2. That it is intended to bring the said before the Magistrate sitting at the Court House to answer to charge of

3. That it is necessary that a writ of *Habeas Corpus* should issue directed to the Governor of the said prison commanding him to have the body of the said before the said Magistrate at the Court House, on the day of at in the forenoon,

and so from day to day until he shall have answered to the said charge or have been otherwise dealt with according to Law.

SWORN at
this
day of 189 .
Before me,
A Commissioner to administer Oaths in the Supreme Court of Judicature.

Naval prisoners (July 1st, 1897).—A case having recently occurred in which a naval prisoner was marched handcuffed through the streets of a town, the Lords Commissioners of the Admiralty are desirous that instructions should be issued to the police throughout the country that naval prisoners should not be marched handcuffed.

In such cases the cost of conveyance through the streets will be defrayed by the Admiralty.

Habitual criminals registry (2), (*Important*), (August 10th 1897).—Referring to Circular Letter, dated March 15th, 1897, a sample form of application is transmitted to be made use of when applying under the new system of identification for the measurements and photographs of prisoners.

During the three years the system has been operative, the metric descriptions of several thousands of prisoners have been systematically arranged in the offices of the Habitual Criminals Registry at New Scotland Yard.

Whenever a metric search form is received of any prisoner who has already registered, his identity can be determined with scientific accuracy and his antecedents found, in the majority of cases, in about three minutes.

By the use of this system, in suitable cases, a vast amount of time and labour, hitherto expended, will be saved to the police forces.

It should, however, be noted that few young persons of sixteen years of age and under, or persons convicted of minor local offences, are at present registered.

To take advantage of the metric system of identification the procedure is as follows :—

When a person is arrested on a charge of having committed a serious offence, and he is unknown to the police, and is remanded for purposes of inquiry if he be thought to be an old offender, a form (*a*) should forthwith be filled in, signed by the superintendent and approved by a magistrate, and forwarded to the governor of the prison in which the prisoner is detained. The approval of any magistrate is sufficient. On the signature of the magistrate being obtained, the application form should be forwarded without delay to the governor of the prison. With the delivery of the form to the prison governor the duty of the police in the matter ends till a

(*a*) See next page.

reply has been received from the Registrar of Habitual Criminals. The reply, with particulars of the convictions, if any, against the prisoner will in most cases be received by the chief constable on the third day after the application has been delivered to the prison governor.

As soon after the conclusion of the case as possible the chief constable should return to the registrar any papers which may have been forwarded by him relating to the prisoner and will inform him as to the result of the case.

_____

_____

_____

The Chief Constable of _____
hereby makes application that the measurements, description, finger impressions and photograph of

_____

_____

charged at _____
with _____
and remanded till _____
shall be taken and forwarded to the Registrar of Habitual Criminals, New Scotland Yard, London, for the purpose of obtaining information as to h antecedents, as in consequence of the nature of the offence with which he is charged, there are grounds for suspecting that he has been previously convicted, or has been engaged in crime.

* _____

_____

Approved.

Signed _____

_____ *J.P.*

Rank _____

___ *day of* _____ 189 .

To The Governor,
H.M. Prison _____

N.B.—The officer of police signing this application must be of not lower rank than superintendent.

* Other reasons, if any, to be here stated.

POLICE RETURNS OF CRIME.

(See 57 J. P. p. 99, February 18th, 1893).

These returns were first made in accordance with requirements of Police Act (19 & 20 Vict. c. 69), and have remained for many years unaltered. A new set of forms have recently been issued, and the period for which the returns are made is now altered from September 29th, to end of calendar year (*a*).

The new returns are voluminous, and the instructions for their preparation comprehensive and elaborate. A circular letter and special instructions were issued by the Home Office, December 30th, 1892, for the guidance of police preparing the returns. Further instructions were issued with a circular on May 16th, 1893, attention being called to a change made in preparation of Return *D.* (b) by excluding the ages of persons summonsed. Annexed to the circular is a copy of letter addressed to justices' clerks, asking them to assist the police in obtaining accurate records.

The chief object of the returns is to ensure uniformity of system. Hitherto various methods have obtained in the several police forces and offences have not unfrequently been duplicated. For the future a definite principle is laid down, *one offence only is to be tabulated*, and rules are given for the selection for the purpose of the *graver offence*. Uniformity is thus secured. A separate return (E.) provides for cases of a *quasi criminal* character.

No instructions are given as to the mode of collecting the returns from the various police districts of a county, and in this respect much diversity of practice prevails, but it is imperative that an accurate and careful day-to-day or periodical record be kept if accuracy is to be secured.

(*a*) See Police Returns Act, 1892, p. 413.

MEMORANDA ON AMBULANCE WORK

(Taken from the
Constable's Pocket Book by T. Hastings Lees, M.A.).

FIRST AID TO THE INJURED.

Ambulance work under the above title has been for some time in vogue amongst police forces, and many officers wear badges for which they have to qualify by examination after attendance at ambulance classes.

The following notes on the subject are here inserted in the hope that they may be useful as a memoranda to the qualified, and to others give an outline of the system advocated in the various handbooks (*a*) issued on the subject:—

Accidents.

In all cases of accidents or sudden illness in the streets the police should afford all necessary assistance, prevent unnecessary crowding, reassure the sufferer, give aid, undo tight clothing, secure from annoyance by pressure or idle questions, and if injury be serious send for medical aid; in cases of fracture secure part in splints before moving, but do not attempt to set the bones. *Extemporary* splints may always be formed of sticks, wood, or an umbrella.

Hæmorrhage.

Hæmorrhage or bleeding may be—

1. *Arterial.*—Where blood is *bright* red, "spurting" from wound, in which case at once apply pressure by thumb or finger.
2. *Venous.*—Where blood is *dark* red, "welling" up from wound, apply pad of lint dipped in cold water and bandage; keep limb well raised.
3. *Capillary.*—Usually caused by *scratch* or graze; bathe in cold water and apply wet rag.

If blood be vomited, give ice to suck, keeping patient quiet.

In nose bleeding, raise head and apply ice or cold water to forehead.

Wounds.

Cleanse wounds by careful washing before dressing; draw parts together, and keep in place with strips of plaister. If organ protrude, cover lightly with flannels wrung out in warm water (temperature 98° Fahrenheit), whilst awaiting arrival of surgeon.

(*a*) "Handbook on First Aid to Injured," by Robert Bruce, St. John's Ambulance Association, Clerkenwell, London, E.C. (1*s.* 1*d.*)

Fractures.

1. "Simple," where bone only is broken.
2. "Compound," where broken bone protrudes.
3. "Comminuted," where bone is broken into several pieces.
4. "Complicated," where bone is broken and surrounding parts injured, as ribs in lungs or artery divided.

In examining, handle very gently; leave clothes on for sake of warmth and for padding. If movement necessary, attach something firm to prevent bone moving. Umbrellas, sticks, or timber, form good *extemporary* splints if padded well with soft material.

If bleeding shows endeavour to stop it.

Fracture of base of skull.—Signs: Unconsciousness, with bleeding from mouth, nose, or ears; sticky bloody fluid from ears. Raise head and keep quiet till doctor arrives.

Fracture of jaw.—Jaw drops; place in position and bandage.

Collar bone.—Sign; inability to raise arm up. *Treatment*: place rolled handkerchief in armpit; raise arm and place in sling.

Arm bone.—Put in splints with bandage each side of fracture; secure upper bandage first.

Fore arm.—Bend limb, keeping thumb up; apply two splints, one inside, one out; apply bandage. There being two bones (ulna and radius) fracture of *one* only is not always perceptible.

Ribs.—Signs: Sharp, cutting pain on taking breath or coughing; ends of bones may be felt. *Treatment*: tie two broad triangular bandages firmly round chest.

Thigh.—Place long splint (broom handles, etc.) from armpit to foot; tie firmly to body by bandage passing round chest, above and below fracture and below knee; tie legs firmly together. In case of woman tie both legs.

Dislocation.

Is distinguishable from fracture by injury occurring *at joint*; limb becomes immovable; there is no "crepitus" or grating sensation; send at once for medical aid.

Sprains.

If there be great pain, a hot bath and fomentation, with complete rest; ordinary cold water and compress; elevate the limb.

Bandaging.

Esmarch's triangular bandage.—The use of this bandage is fully treated of in handbook referred to (p. 454 (*a*).)

Carrying.

Various methods of carrying injured person are given in handbook referred to (p. 454 (*a*)).

Note.—The plan of carrying a person—drunken or violent—face downwards by arms and legs may cause death, and should never be resorted to.

Insensibility.

Syncope and fainting.—If a person has fainted, give air; loosen clothing; place prostrate, with head on level of body; bathe with cold water; give stimulant; in case of exhaustion from hunger give warm milk in sips, then beef tea or wine.

Hysterical fits.—Threaten to drench with water, keep quiet, and exclude friends.

Apoplexy (effusion of blood on brain).—Signs: insensibility; stertorous breathing. *Treatment*: place prostrate, head slightly raised; loosen clothing; keep head cool and feet warm; give no stimulant or anything by the mouth.

Epilepsy.—The person seized with fit, screams, faints, and falls, hands clenched, limbs jerk, mouth foams. *Treatment*: do not restrain movements, but prevent injury, especially to tongue; allow sleep after fit.

Concussion of brain.—In slight cases patient is pale, breathing slow, eyes shut; will probably vomit and recover. Keep feet and hands warm; if a child, let it sleep; in severe cases, treat as for apoplexy.

Sunstroke.—Signs: throbbing, with sick feeling. Apply ice or cold water to head; avoid stimulants.

Foreign Bodies in Ear.

Put a few drops of warm oil in ear and send for doctor; do not poke the ear with pins, etc.

Bites of Animals.

If animal healthy, carefully wash well and dress with cold water; if rabid, apply tight ligature heart side of wound, wash thoroughly, then suck well (taking care no crack in lips): wound should then be *cauterised* with caustic or nitric acid, red-hot iron, gunpowder fired, or ordinary fusee; give brandy.

Adder or snake bite.—Apply strong ammonia; tie ligature between wound and heart, give brandy. The same course may be followed in case of sting of scorpion or hornet.

Burns and Scalds.

Exclude air by dredging with flour if skin is unbroken; if otherwise, soak rag in sweet oil and cover wound; [*never hold a burn to the fire*];

remove clothing adhering, pouring oil over if necessary or cutting round with scissors. In case of person catching fire, throw on ground, wrap in rug, blanket, or coat.

Frost bite.—Limbs become stiff; often hard and cold. Avoid sudden change of temperature. Place in cold room, then in warmer one; rub body with snow or cold cloths, then with warm cloths. When consciousness restored, give light stimulant.

Fire.

The person in flames should be made to lie down at once, as flame ascends; throw a rug or coat over the body.

To pass through smoke in a house on fire dip a handkerchief in water, and tie it round the head, covering the mouth and nostrils; this will enable the wearer to pass through the densest smoke, and breathe freely.

In case of explosion of lamp, water should not be thrown on the burning oil. Sand or flour will extinguish the flame.

Strangulation.

At once cut any compressing band round throat; if necessary, commence artificial respiration, pulling out tongue to secure it.

Choking.—Boldly, but firmly, carry thumb and forefinger to back of mouth to hook obstruction forward: or lay patient on back, kneel on stomach, and strike on cheek; this will result in vomiting.

Hanging.—Cut rope at once; commence artificial respiration, if necessary.

Suspended Animation.

As to treatment to restore natural breathing in cases of persons apparently drowned, or in cases of hanging, see under title, "Wrecks," p. 322, *ante*.

Artificial Respiration.

This should be employed in cases of accident or poisoning, when breathing has become very feeble or has ceased, as in cases of hanging, drowning, suffocation, etc. [Persevere in efforts to restore life until arrival of medical assistance, or until pulse and breathing have ceased for two hours or more.]

See directions, title, "Wrecks," p. 322, *ante*.

Poisons and Antidotes.

Poisons (*a*) are substances capable of destroying life. Life may often be saved by administering an emetic, or an antidote to the poison taken.

Emetics are remedies used for the purpose of causing vomiting.

The safest and readiest are—

Irritating back of throat with the finger or a feather.

A tablespoonful or less of *made* mustard in a tumblerful of tepid water.

Salt half-ounce to one ounce in water, or two tablespoonsful of ipecacuanha wine in water.

(*a*) Alkalies and acids are in many cases strong poisons.

Emetics are good antidotes in poisoning by salts of copper, arsenic, or other mineral or vegetable poisons.

To allay retching after severe emetic give plain warm water or milk and water.

The following is a list of poisons and antidotes :—

Alcohol (Drunkenness). Remedy : Give a tablespoonful of made mustard in a tumblerful of warm water ; then dash cold water in face and give sal volatile, strong coffee. Afterwards promote warmth (p. 459).

Arsenic. Remedy : Emetic of mustard at once, unless vomiting is already present. Sickness must be promoted by administering white of egg, barley water, milk, gruel, or give equal parts of oil and lime water. Two to four tablespoonsful of castor oil may be given to carry off poison from intestines.

Battle's Vermin Destroyer. *See* PHOSPHORUS.

Cantharides or Spanish Fly (Hair Washes). Remedy : Excite vomiting. Give gruel, linseed tea freely, and warm bath. Avoid oil.

Carbolic Acid. Mouth shrivelled and smells of tar. Remedy : Wash with oil, give Epsom salts in water as antidote, followed by white of egg in milk and water.

Caustic or Silver Nitrate. Remedy : Common salt.

Charcoal Fumes or Gas—poisoning by escape of. Remedy : Remove at once to pure air. Dash cold water on head and neck. Rub chest with stimulating applications. Artificial respiration.

Copper, Salts of—*Mercurial Plate Powder*, *Blue Vitriol*, *Verdigris*, *Creosote.* Remedy : Give raw eggs freely.

Copperas—*Green Vitriol.* Remedy : Magnesia in milk freely.

Gas. *See* CHARCOAL.

Goulard's Extract—*Sugar of Lead*, *White Lead.* Remedy : Epsom salts and vinegar mixed.

Hair Wash. *See* CANTHARIDES.

Hartshorn and Oil—*Washing Soda*, *Carbonate of Soda.* Remedy : Vinegar and water, followed by orange or lemon juice in water.

Hemlock—*Tobacco*, *Deadly Nightshade.* Remedy : Emetics ; then castor oil, then brandy.

Hydrochloric Acid or Spirits of Salt—*Nitric Acid*, *Sulphuric Acid*, or *Oil of Vitriol.* Remedy : Chalk, whiting, soap and water, or the plaster of the apartment beaten up with water. Olive oil, linseed tea, barley water, milk gruel, may be given freely, either alone or with the above.

Laudanum. *See* MORPHIA.

Lead, Sugar of, and White Lead (Goulard's Extract). Remedy : Epsom salts and vinegar mixed.

Mushrooms, Poisonous. Remedy : Prompt emetic ; then dose of castor oil ; then brandy.

Morphia — *Opium*, *Laudanum*. Remedy : Give a mustard emetic. Keep patient awake by walking him quickly about. Beat legs with wet towels, etc. Give strong coffee.

Nitre. Remedy : Give an emetic at once.

Nitric Acid. Remedy : *See* HYDROCHLORIC ACID.

Opium. *See* MORPHIA.

Oxalic Acid. Acid taste and burning sensation, vomiting blood. Remedy : Chalk, whiting, or magnesia in water. If necessary, vomiting should be excited.

Prussic Acid. Remedy : No antidote can be relied on. Dash cold water at once over head and neck ; repeat at intervals. After recovery, excite vomiting, and then give strong coffee and brandy.

Phosphorus — *Battle's Vermin Powder*, *Rat Poison*, *Matches*. Remedy : Treatment *at once*. Oil of turpentine, dose up to one ounce.

Rat Poison. *See* PHOSPHORUS.

Saltpetre. Remedy : Give an emetic at once.

Strychnine. Remedy : Emetics at once, and repeat till free vomiting. If spasms have not begun, give oil (olive, melted lard, etc.) freely. Keep surroundings as quiet as possible, as even a breath of cold air may bring on a spasm.

Sugar of Lead, White Lead. *See* LEAD.

Note.—Albumen and oils will protect the gullet and walls of the stomach in poisoning by irritants. White of egg, milk, flour and water, salad oil, and castor oil may be used.

ALCOHOLIC POISONING (*Drunkenness*).

Police should carefully note symptoms in special cases lest a fit or illness be mistaken for drunkenness. If in aggravated cases state is plainly due to intoxicant, give emetic (salt or mustard) and repeat, if ineffectual ; after vomiting, patient should sleep. Keep warm, hot tea is a good stimulant ; a drunken person can be roused by rubbing his ears, but this treatment may cause him to strike out.

Note.—Do not place a drunken person in a cold cell ; excessive drunkenness is a serious source of danger.

INDEX.

—:—

A.

PAGE

ABDUCTION 314, 318
Statutory Provisions 360
ABETTORS 66
Statutory Provisions 327
ABORTION 314
Statutory Provisions 361
ABUSIVE LANGUAGE 8, 79
ACCESSORIES 65
Statutory Provisions 327
ACCIDENTS 454
ACCOMPLICES 65
Evidence of 36
ACCOUTREMENTS 62, 396, 408
ACQUITTAL, effect of 6
ACTIONS,
Against police 14
justices 193, 303
ACTING PLAYS in booths 278
ACTS of BANKRUPTCY 85
ACTUAL BODILY HARM 81, 359
ADDITIONAL CONSTABLES 2, 60, 399, 440
ADJOINING COUNTIES (offences) 9
Chief constables for 395, 404
ADULTERATION 153
Of bread 104
Of seeds 66
ADULTS (Summary Jurisdiction Act), offences by ... 386, 393
ADVOCATES—Police as 41
AFFIDAVIT (term) 43
AFFILIATION ORDER 88
AFFIRMATION in lieu of oath 35
AFFRAYS 47, 270
AGE LIMIT (Superannuation) 414, 426, 437
AGENT OR SERVANT (term defined) 134

PAGE

AGENTS, fraud by 336
AGRICULTURAL GANGS 66
AID to INJURED 454
"AID" POLICE FORCES 422, 443
ALCOHOL (poison) 458
ALEHOUSE ACT (Epitome of Statute) 363
ALEHOUSES (article) 201
ALLOWANCES,
Proving previous convictions ... ... 446—448
To prosecutors and witnesses ... ... 22—25
ALMS,
Collecting—exceptional, charity, etc. 295
Gathering—beggars 296
AMBULANCE WORK 454
ANALYSIS of bloodmarks 27
In poisoning 27
Food and drugs 157
ANALYST, public 157
ANGLING—Seizing rod 329
ANIMALS,
Diseases of (*article on*)—
Orders, offences, local authorities, notification, police, dairies, dogs, transit, foreign animals, definitions, fairs, symptoms of disease ... ... 66—71
Miscellaneous provisions—
Baiting, cruelty to "domestic" ... ... 118—120
Drugging of... 244
Exposing in streets... 283
Feræ naturæ 44
Larceny of 196
Kept for whim or pleasure 196
Maliciously injuring 226, 345
Rabid animals 129, 456
ANNUAL STATEMENT OF CRIME 402, 410, 413, 453
ANNE (Statute)—*distress* 126
ANTIDOTES 457
APOPLEXY 456
APOTHECARIES' WEIGHTS 306
APPEALS,
From Petty Sessions 82
Licensing Acts 213
S. J. Act 387
Quarter Sessions 82

PAGE

APPLES, on branch 331

APPRENTICES,

Treatment of 72, 357

To sea 73

APPROVED SERVICE... 415

ARMY ACT 73

ARMY RESERVE 415

ARREST,

Police duties—

In felonies, misdemeanors, warning to assist, breaking doors, forcible entry, time, place, mode, breach of peace, abusive language, arrest with warrant, without 7—10

Article on—

By private person, by constable, of persons "found committing," by justices, breaking doors, etc. ... 76, 77

Miscellaneous—

In murder cases 27

Persons found loitering 298, 347, 338, 362

Of debtor 123

Persons pawning goods 236

Discharged prisoner 447

Under various statutes 354, 298, 338, 362, 347

With warrant 9

Without warrant 10

ARSENIC,

Sale of 77

Poison by... 458

ARSON—*Article on* 78

Criminal investigation 27

Statutory provisions 340, 342

ART UNIONS 223

ASPORTATION—Larceny 194

ASSAULTS,

Article on—

Chastisement, in self-defence, in prize fight, trespass (*fox-hunt*), at public meeting, by medical man, statutory summary, by husband, on police officials, wounding ... ... 78—81

Statutory provisions—

On clergymen, magistrates, peace officers, seamen, to prevent sale of grain, common assaults, battery, on children, on females, "actual bodily harm" ... 358—9

ASSAULTS—*continued.* PAGE
Miscellaneous—
By medical man on female 79, 116
Grievous bodily harm 356
Indecent assaults 360, 315
Necessity—self-preservation 187
Obtaining name of assailant 8
On police or special constable 49, 53, 80, 248
On females and boys 315
ASSIZES,
Courts 81
Expenses at 24
Winter assize 81
ASSUMING DRESS OF CONSTABLE... 62
ASTROLOGISTS—vagrancy 296
ATTEMPTED CRIME 6
ATTEMPTS TO MURDER (Statute) 355
ATTESTATION OF RECRUITS (Army) 74
AUCTIONS, MOCK 33
AUTHORITIES, LOCAL,
Definition 66
Procedure at courts 254, 289
Weights and measures 309

B.

BABY-FARMING 109, 445
BACCARAT 89, 174
BACKING WARRANTS 9, 301, 380, 382
BAGATELLE-BOARD 98
BAIL 18, 20, 83, 381
By police officers 18, 84
Drunkenness 131
Summary Jurisdiction Act 20, 390
Protecting children 111
BAILEES,
Definition 43
Larceny by 195, 327
BAILIFFS,
Assaults on 80, 304
Police assisting 80, 304
Uncertificated 127

PAGE

BALLOT ACT 133
Boxes 133
BAIT-BEDS 153
BAITING ANIMALS 120, 287
Dogs 120, 129
BAKEHOUSES 85
BAKERS 103
BAKING ON SUNDAY... 275
BANDAGING 455
BANKERS,
Books Evidence Act 38
Frauds by 336
BANK NOTES, forging 349
BANKRUPTS 85
BARBER, trading on Sunday 274
BARBED WIRE 87
BARNARDO'S HOMES... 112
BARRISTER, REVISING 13, 83
BASTARDY 87, 294
BATHING 288
BATTERY 78, 359
BATTLE'S VERMIN DESTROYER 458
BEAM, false (Bread Act) 104
BEASTS, stealing (Statute) 329
BEAR 120
BEAT DUTY 11
BEER,
Botanic beer 366
Licences to sell 204, 365, 379
Term includes ale and porter 365
BEERHOUSES 204
Statutory provisions 365
BEERSHOP—defined 204
BEGGING,
Children 110
Exceptional cases 295
Letter 148
Vagrants 295
BELLS, ringing of 285
BETTING ACTS 88
"Places" 89
BETTING BOOK, not an instrument of gaming 297
BETTING CLUB 89, 175

PAGE

BETTING HOUSE—A gaming house 172
BETTING ON WASTE GROUND 175
BETTING AND LOANS, Infants 91
BETS PAID IN PUBLIC HOUSE 90, 175
BESTIALITY 315, 361
BICYCLES 92, 180, 284
BIGAMY 93
Article on—
Criminal investigation 29
Statutory provisions 360
BILL—"True Bill" (definition) 44
BILLET PAPERS (old forms) 446
BILLETING OF SOLDIERS ... ... 93—97
BILLIARDS 98, 174, 375
BIRCHING 436
BIRDS,
Decoy 120
Killing, etc. 345
Protection Act 99
Stealing 329
BIRTHS. 101, 115, 123
BIRTH, CONCEALMENT OF 115
Detecting offence... 29
Forging register of 349
Statutory provisions 361
BITES OF ANIMALS 456
BLACKENING FACE AT NIGHT 333
BLASPHEMOUS PUBLICATIONS 102
BLASPHEMY 102
BLEEDING 454
BLOOD, LOSS OF 454
BOARD OF AGRICULTURE ACT, 1889 102
BOATS,
Licensing of 206, 260
On canals 107
BODIES—Article 122
Burial of 106
Dissection of 122
Of infants 30
Two in coffin 101
BODILY HARM 80
Statutory provisions 356, 359

PAGE

BONA FIDE TRAVELLERS 213, 376
BOOTHS,
Acting in 278
Selling liquor in 210
BOROUGH,
County police not required to act in 404
Meaning of term 403
Population 403
BOROUGH POLICE 48
Apprehension by 48
Consolidation with county 399
Crime returns 48
Merged in counties 62
Powers, in county 48
Voting at elections 413
BOROUGH SESSIONS 82
BORROWING ON POLICE RATE 399
BOUNDARIES, offences on 9
BOW STREET (Extradition)... 144
BOYS, assaults on (Statute) 359
BRANCHES, overhanging 331
BRANDY 163
BRAWLING 102
BREACHES OF THE PEACE 8
BREAD ACT 103
BREAKING DOORS 7, 77, 127
BREATHING, to restore 322
BREWSTER SESSIONS 363, 378
BREWERS SOCIETY (opinion) 273
BRIBERY 104
BRIDGES, injuring 344
BROKEN LIMBS 455
BROTHELS 125, 208, 313, 320
Detention in 319
BUILDING, UNFINISHED, a dwelling 341
BUNDLES, persons carrying at night 28
BUOYS, REMOVING 346
BURDEN OF PROOF (definition) 6
BURGLAR—Shooting at 187
Implements of 30

PAGE

BURGLARY 27, 43, 105
Criminal investigation 27
Definition 105
Statutory provisions 333
BURGLARY ACT 82
BURIAL, CHRISTIAN 106
BURIAL OF SUICIDE 272
BURIAL LAWS 106
Stillborn child 101
BURNS AND SCALDS 456
BUTTER (definition) 164
BYE-LAWS,
Article on 106
Highways 183
Public health 255
Locomotives 185

C.

CABS 287, 288
CADGERS 32
CANAL BOATS ACT 107
CANTEENS 206
CANT'S CASE (*Lancs.*) 415
CARBOLIC ACID 458
CARNAL KNOWLEDGE 317, 359
CARPET BEATING IN STREETS 286
CARRIERS,
With guns 176
With dogs 130
CARRYING—Injured person, prisoner, etc. 456
CARTS AND DRIVERS 182
CARTS, ETC., IN STREETS 283
CASE, stating special 389
CASKS, ROLLING, IN STREETS 285
Cleaning, in streets 285
CASTINGS, *footmarks* 444
CATS 196, 226, 329
CATTLE 66
Definition of 70
Diseases, symptoms of 71

CATTLE—*continued.* PAGE

Dogs injuring 127
Malicious injury to 345
Stealing of 28, 196, 329
Straying on highway 181
Impounding, sale, etc. 120
Slaughtering, dishorning, etc. 119, 120, 283
CATTLE PLAGUE 71
CATTLE TRUCKS, CLEANSING OF 70
CAUTIONING PRISONERS 16
CELLAR COVERINGS 280
CELLAR UNPROTECTED 286
CENTRAL CRIMINAL COURT 81
CERTIFICATES (Pedlars) 237
Chimney sweepers 113
CERTIFICATE OF EFFICIENCY 419
Of service... 415
CERTIORARI (definition) 43
CHAFF CUTTING MACHINES 279
CHALLENGE TO FIGHT 253
CHAPEL, BREAKING INTO 333
CHAR (Fisheries) 150
CHARACTER, EVIDENCE OF... 38
CHARACTERS, FALSE 230
CHARACTERS TO SERVANTS 230
CHARGE, giving in 6
CHARGE SHEETS 410
CHASTISEMENT—moderate 79
CHATTEL (definition) 43
CHEAP TRAINS ACT 262, 434, 435
CHEATING 107
CHEATING AT PLAY... 107
CHEQUES, CROSSING OF, ETC. 349
CHEQUE, FICTITIOUS NAME TO 349
CHEMICAL OFFICERS—Analysis 161
CHEMISTS 244
CHESHIRE CONSTABULARY ACT 403
CHIEF CLERK—Rating 408
CHIEF CONSTABLE,
Duties of 411
Appointment of 59, 395
Attendance at quarter sessions 397
Extraordinary expenses 397

CHIEF CONSTABLE—*continued.* PAGE
For adjoining county 404
Local Government Act 220
Power to suspend constables 405
Qualifications for office 406
Reports by 411
Returns by 400, 453
Superannuation of 417
To appoint constables 395
Two in one county 395
CHIEF OFFICER—pension 417
CHIEF OF POLICE—granting authority to search ... 250, 252
"CHIEF OFFICER OF POLICE"—expression defined 251
CHILDREN,
Article on—
Infants, Italian children, deserted children, Infant Life Protection Act, dangerous performances, acrobats, prevention of cruelty, employment of children, powers of police, custody of children ... ... 108—112
Miscellaneous—
Assaults on 79, 312, 317
As sweeps 112
Begging 110, 189
Concealing birth 29, 115, 361
Defilement of, etc. 312, 316, 317, 319
Education of 132
Employment of 66, 110
Employment in mines 233
Exposure—endangering life 110, 357
Evidence of 37, 111, 315
Illegitimate 87, 230, 294
Neglecting to maintain 294
Of prisoners 249
Offences by (Summary Jurisdiction Act) 385
Stealing 360
Still-born 101
Selling spirits to 207, 367
Sending to industrial school 189
With thieves 189
Whipping of 385
CHIMNEY—Black smoke 257
CHIMNEY SWEEPERS 113

PAGE

CHLOROFORM, USING 356
CHOKE, ATTEMPTING TO 356
CHOLERA 259
CHRISTMAS DAY—killing game on 166
CHRISTIAN BURIAL 106
CHURCH, BEHAVIOUR IN 102
Breaking into 270, 333
Maliciously injuring 340, 341
CHURN—with gauge 305
CIDER, Licensing 365
CIDER (term includes perry)... ... ... 211, 365
CINQUE PORTS 403
CIRCUITS 81
CIRCULARS—Confidential 444
CIRCULARS OF SECRETARY OF STATE 433
CIRCUMSTANTIAL EVIDENCE 35
CITY POLICE... 10
CIVIL ACTIONS 81
CIVIL DEBT 385
CIVIL PROCEEDINGS 37
CLAIM OF TITLE (Trespass) 292
CLAIMS AGAINST HUNDRED 58, 270
CLEANSING OF PERSONS ACT 300
CLERGYMAN, ASSAULT ON 79, 358
CLERKS, LARCENY BY 334
CLERK OF PEACE 222
CLOSE SEASON FOR FISH 152
CLOSING HOURS (Licensing) 209, 369, 375
CLOSING HOURS (in Riots)... 211
CLOTHES, HANGING in STREETS 285
CLOTHING 408
CLOVER, STEALING 331
CLUBS, BETTING IN 89
CLUB (Park Club Case) 172
CLUB DINNER 210
CLUB LICENCE 205
COALS, SALE OF 310
COCK-FIGHTING 120
COCKS, "DUBBING"... 119
COCKLES 153

	PAGE
COCOA	156
COERCION	...6, 311
COFFEE, MIXED	156
COINAGE—Statutory Provisions relating to	350, 354
COINING	113, 351
Counterfeit (uttering)	114, 351
Counterfeit (detecting)	29
COLLAR BONE	455
COLLECTING BOXES (alms)...	295
COLOURING COIN	351
COMMITMENT WARRANT	381, 383
COMMISSIONERS OF FISHERIES	83
COMMON ASSAULT	78, 359
Battery	78, 359
COMMON LAW (term)	43
COMMON LODGING-HOUSE	114, 255
COMPETENCY of WITNESSES	37
COMPOUND ARTICLE (Food)	155
COMPOUNDING FELONIES (definition)	44
Offences	115
CONCEALMENT of BIRTH	29, 115
Detecting offence...	29
Statutory Provisions	361
CONCUSSION OF BRAIN	456
CONDUCT MONEY (definition)	47
CONIES...	167
CONFECTIONERS (Licensing)	364
CONFERENCES...	11
CONFESSIONS	14, 16, 36
CONFESSIONS AS EVIDENCE	36
CONFESSION OF PRISONER...	14, 16, 36
CONFIDENCE TRICK...	33
CONFIDENTIAL CIRCULARS	444
CONGREGATION, DISTURBING OF...	102
CONSENT, Carnal knowledge	317
CONSENTING TO BE SEARCHED	302
CONSOLIDATION OF POLICE FORCES	62, 399
CONSPIRACY	116, 134
To murder	116
"CONSTABLE" (origin, etc.)	5

CONSTABLES, PAGE

Classification—
Additional 2, 399, 440
Borough and towns police 48, 49
County 59
High 58
On public works, canals, and rivers 54, 55
Parish 56
Special and other constables 51

General Duties (Chap. II.)—
Beat and patrol, use of staff, fires, sudden death, criminal investigations 11
Statutory duties, public order, drunkenness, "treating," removal from premises, railways 12
Military, deserted children, summonses 13
Demeanor, service of orders, evidence, actions against... 14
Expenses, protection of constables, employment ... 15

Statutory Provisions (Police Acts)—
Apportionment police to population, accoutrements, dress, neglect of duty, dismissal, employments, voting... 395, 396
Expenses, Justices' orders, police and publicans ... 397
Exemption from toll 398
Efficiency, reciprocal powers 401, 402
Punishment, suspension 405
Resignation 404
Rules, qualifications, rates of pay, etc. 406, 407
Synopsis of Police (*England*) *Acts* 59

Miscellaneous—
Arrest 7, 76
As relieving officers 299
Assaults on 15, 80
Assisting bailiffs 83, 304
Cautioning and searching prisoners 16
Compulsory establishment of forces 59
Consolidation 62
Detective duties 26
Fees—receiving gratuity 14, 24
Handcuffs 17
Larceny and embezzlement by 335
On railways... 261
Police and publicans—gratuity from innkeeper 12, 14, 208, 287
Removing trespassers 291

CONSTABLES—*continued.* PAGE

Rewards 20, 266
Rules of conduct, maxims 3
Summonses 13
Travelling 262
Voting 412
Warrants 14, 300, 303, 390, 391
Superannuation.—See Police Act, 1890.

CONSTABULARY,
Certificate of efficiency 63, 403
Consolidation of 62, 399
Establishment of forces 1, 48, 59, 395
Inspectors of 1, 63, 402, 405
Returns 61, 400, 413

CONTAGIOUS, INFECTIOUS—terms... 259

CONTAGIOUS DISEASES (ANIMALS) 66, 221
Symptoms of 70

CONTEMPT OF COURT 83

CONVICTS 117, 246
Children of 249
Registers 247
Remission of sentences 240
Reporting, etc. 247

CONVICTIONS, LICENSING 370

CONVICTIONS, PREVIOUS 250, 446, 448

CORN, malicious injury to 342
Servant misappropriating 231

CORONERS 117
Police assisting 13, 190

CORONERS' INQUESTS 118, 191

CORPSE, removal of, from grave 122

CORROSIVE FLUID, THROWING 357

CORRUPT PRACTICES ACT 133

COSTS (Larceny Act) 340

COUNTERFEIT COIN 29, 113, 350
Uttering 29, 114, 351

COUNTERFEITING COIN 351

COUNTERFEIT STAMP (Weights and Measures Act) 308

COUNTIES—Detached parts 398

COUNTY COUNCILS 220

COUNTY COURTS 83

COUNTY COURT BAILIFFS 83

"COUNTY"—defined 401, 403

PAGE

COURSING RABBITS 120
COURT HOUSE,
Petty Sessional (definition) 387
Occasional (definition) 387
COURT MARTIAL 75
COURTS 387
COURTS OF JUSTICE ... ... 81—83
COURTS OYER AND TERMINER 81
COWSHEDS 69
CRABS 152
CREAM 156
CREDIBILITY OF WITNESS 37
CREMATION 106
CRICKET ON SUNDAY 275
CRIME (definition) 43
Attempted 6
Annual statement 61, 453
Classification of 6
CRIME RETURNS 402, 410, 413, 453
CRIMES AT SEA 9
CRIMINAL INVESTIGATION 11, 26
CRIMINAL LAW AMENDMENT ACT ... ... 312—320
CRIMINAL LAW CONSOLIDATION ACTS ... ... 118, 326—362
"CRIMINAL PROCEEDING"—Defined 37
CRIMINALS, DEVICES OF 30
CRIMINALS, STATISTICS 10
CROPS, MALICIOUS INJURY TO 342
CROSS-EXAMINATION 14, 40
CRUELTY,
To animals 118
To dogs 129
To children 112
CULPABLE NEGLIGENCE 187
CULTIVATED ROOT, Larceny of 331
CURTILAGE 175, 333
CUSTODY OF CHILDREN ACT 112
CUSTODY OF GIRL 319
CUSTODY, Giving into 6
CUSTOM LAWS 122

D.

DAIRIES ORDER 69
DANCING AND MUSIC 233

PAGE

DANCING (exceptional occasion) 278
DANGEROUS PERFORMANCES 109
DAY-TIME DEFINED (Game) 168
DEAD BODIES... 122
DEALERS—Old metals 227, 232, 249
DEALERS—Marine stores 227
DEATH, REGISTER OF 101
Sudden 11
DEBT, IMPRISONMENT FOR 123
DEBTOR, FRAUDULENT 85
DEBTORS ACT 123
DECOY BIRDS 120
DEEDS, FORGERY OF 350
DEER-STEALING 328
DEFACING COIN 352
DEFILEMENT OF WOMEN AND GIRLS 312, 316
DEFINITIONS, LEGAL TERMS, ETC. 43
DEMEANOR OF CONSTABLE... 14
DEMOLISHING HOUSES (Riots) 270, 341
DEPOSITIONS 39
Definition 45
Giving in evidence, sick persons 39
DEPUTY CHIEF CONSTABLE 60, 396
DESERTED CHILDREN 13, 108
DESERTER 123
Pretending to be 125
DESERTERS' EXPENSES 435, 436
DESERTING WIFE 230, 296
DESTRUCTIVE INSECTS ACT 221
DETACHED PARTS OF COUNTIES 398
DETENTION OF WOMEN AND GIRLS 313, 318
DETECTIVE DUTIES 26
DEVICES OF CRIMINALS 30
DIPHTHERIA 259
DIRECT EXAMINATION 40
DIRECTORS, FRAUDS BY 336
DIRECTOR OF PUBLIC PROSECUTIONS 20
DISCHARGED PRISONER—Re-arrest 447
DISEASES, ANIMALS... ... ...66, 71
Executive Committee 66, 129
Symptoms of diseases 70

	PAGE
DISEASES,	
Contagious	259
Epidemic	260
Infectious	258
DISGUSTING LANGUAGE	41
DISHORNING CATTLE	119
DISINFECTION OF ROOM	259
DISLOCATION	455
DISMISSAL,	
Bar to service	407
Without superannuation	417
DISORDERLY MEETING	79
DISORDERLY HOUSES	125, 368
DISSECTION	122
DISSUADING WITNESSES	35
DISTRAINT FOR RENT	126
DISTRESS WARRANT	126, 303
(Summary Jurisdiction Act, 1848)	382
DISTRICT AND COUNTY CONSTABLES	395
DISTURBING CONGREGATION	102
DIVORCE PROCEEDINGS	80
DOCTOR, ASSAULT BY	79, 116
DOCUMENTARY EVIDENCE	38
DOGS,	
Article on—	
Stealing of, injuries by, injuries to, "scienter," poisoning, dog spears, savage dog, mad dog, muzzling, cruelty to, fighting, mutilating, dog dying, dog for draught, vivisection, licences, exemptions, carriers	127—130
Miscellaneous—	
Baiting	120
Injury by and to	127
In streets	283
Killing, etc	345
Poisoning	226
Savage	128, 283
Not a chattel	147
Scienter	128, 283
Stealing	127, 328, 329
Trapping	226, 345
With poachers	244
DOMESTIC ANIMALS	120

PAGE

DOMINOES (Gaming) 174
DRESS OF POLICE, ASSUMING 62, 397
DRILLING, ILLEGAL 290
DRINKING ON PREMISES 367
DRIVERS OF CARTS 182, 283
DROWNING 322
Treatment to restore breathing 323
DRUG DEFINED 154
DRUGGING ANIMALS 244
DRUGGISTS 244
DRUNK AND RIOTOUS—Term defined 131
DRUNKARDS, HABITUAL 131
Children of 132
Retreats for 131
DRUNKARDS—Exclusion from licensed premises ... 208, 367, 369
DRUNKENNESS 12, 130, 207
Illness mistaken for 18, 459
In streets 286
On highways, etc. 207
Practice as to apprehending 12, 207
Poison, Alcohol—*treatment* 458
Licensing laws 368
On railways 261
On licensed premises 208
DUBBING COCKS' COMBS 119
DUELLING 253
DUST NUISANCE 255
DUTIES, DETECTIVE... 26
DUTIES OF POLICE UNDER STATUTES 12
DUTY, POLICE NEGLECTING 14
DWELLING-HOUSE, LARCENY IN 334
Setting fire to 340
DWELLING-HOUSE IN UNFINISHED STATE 341
DYEING SEEDS 66
DYING DECLARATIONS 39
DYNAMITE 137, 150

E.

EARLY CLOSING LICENCES 210
EASTBOURNE RIOTS 268
EATING-HOUSE (Licensing)... 205

PAGE

EAR, INJURED 456
EDUCATION ACTS 132
EDUCATION ON CANAL BOATS 107
EDWARD III. STATUTE 81
EDWARD VI. STATUTE 201
EELS 151
EGGS 101
EGGS OF GAME BIRDS 166, 242
EGGS OF SWANS, DUCKS, ETC. 244
ELECTIONS 133
Bribery at 105
Municipal elections 404
Police Disabilities Removal Acts 412
ELECTRICITY, STEALING OF 197
ELVER (EEL FRY) FISHING ACT 150, 151
ELY, ISLE OF 401
EMBEZZLEMENT 133
By clerk, servant, etc. 134, 334
By police 335, 405
By officers of bank 336
Definition 44
Game by keepers 171
Of materials by workmen 135
EMBEZZLEMENT AND LARCENY ... ... 133—135
EMETICS 457
EMPLOYMENT—Restraint on police 15
EMPLOYMENT—Children 110
EMPLOYERS AND WORKMEN ACT... 135
ENGINE, STEAM, INJURING 342
ENTRY ON PREMISES 377
EPILEMIC DISEASES 260
EPILEPSY 456
ESCAPE OF PRISONER 18
ESTREATING RECOGNIZANCES 46
EVIDENCE,
Chapter on—
Oath, incapacity, dissuading witness, general rules, circumstantial evidence, prisoner, accomplice, confessions, credibility and competency of witness, husband and wife, children, character, guilty knowledge, handwriting, documents, convictions, depositions, declarations, sick persons, examination, police ... 35—42
Police (licensing) unsworn evidence 203, 204

PAGE

EXCHEQUER BILLS, FORGING 348
EXCHEQUER CONTRIBUTION 419
EXCISE 12, 175
EXCUSABLE HOMICIDE 355
EXEMPTION ORDER—Licensing theatres 210
EXEMPTIONS—Licensing 210, 369
EXHAUSTED TEA 161
EXHIBIT—Term 44
"EXISTING" CONSTABLE—pension 423
EXPENSES,
Of actions 15
In police districts 400
Of prosecution 21
Of prosecutors and witnesses ... ... 21—25, 448
Police, extraordinary 61, 397
EXPERTS IN HANDWRITING 39
EXPLOSION OF LAMP 457
EXPLOSIVES ACT,
Article on—
Obstructing officer, apprehension, definitions, gunpowder licences, notification, private use, packing, conveying, hawking, selling, Orders in Council, inspectors, procedure, Explosive Substances Act ... ... 135—141
Circulars 435, 444
Malicious injury by 341
EXPLOSIVE SUBSTANCES ACT 140
EXPOSING WOUNDS 296
EXPOSURES, INDECENT 285, 296
EXTORTION 141, 193
EXTRACT FROM ORIGINAL EDITION OF SNOWDEN 30
EXTRADITION ... ... 141—145
Circulars 143, 434, 435, 438

F.

FACTORIES AND WORKSHOPS 145
FACTORS, FRAUDS BY 336
FACTORY, NUISANCE IN 256
FAINTING 456
FAIRS, OCCASIONAL LICENCES AT 210
FALSE ALARM OF FIRE 146

PAGE

FALSE CHARACTERS 230
FALSE DECLARATIONS—Bankruptcy 87
FALSE IMPRISONMENT 15
FALSE PERSONATION 146
FALSE PRETENCES 147
Obtaining food 148
Statute 336
Venue 49
FALSE SCALES 104
FALSE WEIGHTS 307
FALSE WEIGHT—Bread 103
FAMILY, NEGLECTING TO MAINTAIN, ETC. 294, 296
FARCY 71
FARE—A debt 288
FATHER, PUTATIVE 88
FEES,
Circular on 439
Constables receiving 63
County constabulary 399
Police Act, 1890 ... ... 422, 425
Fees to pension fund 419
To constables, assizes, quarter sessions, etc. 24
To experts, scientists, and professional witnesses 23
To parish constable 57
To various officials at assizes, etc. 21
FELO DE SE 272
FELONY 7
Arrest for 7
At sea 9, 231
Charge of intending to commit 249
Compounding 44, 115
Definition 6
Jurisdiction 9
Misprision of 44
FEMALE LUNATIC, ABUSE OF 225
FEMALES, ASSAULTS ON ... ... 312—320
FEMALE PRISONERS 17
FENCES—Stealing, destroying, &c. 331, 343
"FENCES"—Slang term 34
FERÆ NATURÆ—Animals 44, 196
FEROCIOUS ANIMALS 234

PAGE

FERRETS,
Killing 345
Seizure 244
Stealing 196
FEVERS 259
FIERI FACIAS 44
FIGHT, CHALLENGE TO 253
FIGHTING IN HOUSE 7
FIGHTING IN PUBLIC HOUSE 208
FILTHY LANGUAGE... ... ... 14, 41
FINANCE 63
FINES, by instalment 19
FIRE, ACCIDENTS BY 457
FIRES 11
Arson 78
False alarms 146
In towns 287
Malicious injury by 340
On highways, &c. 180
On constable's beat—saving life, &c. 11
FIRE ARMS WITH DRUNKEN PERONS 207, 368
FIRE POLICE 421
FIREWORKS,
On highways 180
In streets 285
FIRING MINES 344
FIRST AID TO THE INJURED 454
FIRST OFFENDERS ACT 149, 449
FISH (Larceny Act) 329
FISHERIES 149
Close time 152
Elver 150
Freshwater Fisheries Acts 149
"Freshwater fish" defined 151
Norfolk and Suffolk—Special provision 150
Poison 152
Salmon Fishery Acts 150
Sea 152
Shell fish 152
FISHERY COMMISSIONERS 13
FITS 456
FLASH LANGUAGE 34

PAGE

FLYING KITES IN STREETS 285
FLOWER-POTS IN WINDOWS 286
FOOD AND DRUGS, SALE OF ... ... 153—164
Article on—
Prejudice of purchaser, article demanded, skim milk, mustard, coffee, cocoa, opium, compound article, label, abstracting quality, analyst and analysis, samples, refusing to sell, procedure, summons, warrants, chemical officers, tea, spirits, milk, average quality ... ... 153—165
FOOT AND MOUTH DISEASE 71
FOOTBALL ON HIGHWAYS 180
FOOTMARKS 28, 444
FOOTWAYS,
Riding on 284
Ploughing of 180
FORCIBLE ENTRY 7, 165
FOREIGN ANIMALS 70
FOREIGN COIN 352
FOREIGN MADE GOODS 252
FOREIGN WINES 364
FORFEITED WEIGHTS, DISPOSAL OF 305
FORGERY 166
Statutory provisions 348
FORTUNE TELLING 293, 296
"FOUND OFFENDING"—Term (vagrants) 298
"FOUND" ON PREMISES 209, 297
FOUND COMMITTING 149
FOWL STEALING (detecting) 28
FOWLS TRESPASSING 226
FOX HUNT, OBSTRUCTING (Assault) 79
FOX HUNTING, TRESPASS 168
FRACTURES 455
FRAMEWORK KNITTERS 135
FRAUD, LONG FIRM... 34
FRAUDS, by various persons 336
FRAUDULENT DEBTOR 85
FRESH PURSUIT 301
FRIENDS ON LICENSED PREMISES,
Landlord supplying liquor to 209
Gaming 210
FROST BITE 457

PAGE

FRUIT, DESTROYING MALICIOUSLY 343
FRUIT PICKERS' LODGINGS 260
FRUIT STEALING 197, 331
Destroying 343
FUGITIVE CRIMINALS 143
FUGITIVE OFFENDERS ACT 144
FURNACES CONSUMING OWN SMOKE 256
FURIOUS DRIVING 183, 284, 358, 406

G.

GAME,
Article on—
Game defined, excise, licences, police watching, daytime, trespass, violence, seizure, coursing hares, night poaching, property in game, "nicking" rabbits ... 166–171
Miscellaneous—
Stealing 197, 328
Poaching Prevention Act 242
Eggs of game 242
GAMES,
Unlawful 12
On highways 180
GAMING,
Article on—
Gaming House Act, unlawful games, baccarat, instruments of gaming, gaming house defined (*Park Club case*), gaming in public place, in public-house, games of skill ... ... 171—175
Miscellaneous—
Cheating 107
Licensed premises 209, 369
In railway carriage 297
Permitting gaming 209
Gaming instruments 91
Unlawful games 12
GANGS, AGRICULTURAL 66
GAOLERS' FEES 24
GAS, LARCENY OF 197
GAS POISON 458
GATES ON ROADS 184

GIRLS, PAGE

Abduction of 318, 360
Carnal knowledge of 317
Custody of 319
Defilement of 316, 359
Detention of 318, 360
Indecent assaults on 315, 360
Procuring... 316
Protection of 312
Search for 319
GIPSIES, NUISANCE 234
GIN 163
GLANDERS 70
GLASS AS A MEASURE 304
GOOD SERVICE, REWARDS FOR 63
GOODS IN STREET 285
GOVERNMENT INSPECTORS OF CONSTABULARY 402
GRAIN
Obstructing sale 79
Poisoned 245
GRAND JURY 192
GRANT FROM TREASURY 63, 419
GRANTING OF LICENCES—statute 371
GRATUITIES TO POLICE,
After fifteen years' service 63, 414, 426
For meritorious act 63, 405, 422, 425
In lieu of pensions 414, 426
Widows 414, 427
GREAT SEAL, FORGERY OF 348
GREENWICH TIME 209
GRIEVOUS BODILY HARM 81, 356
GUARDIANS OF UNIONS 299
GUILTY KNOWLEDGE, GIVING EVIDENCE OF 38
GUILTY KNOWLEDGE 38, 198
GUN,
Carrier conveying 176
Defined 175
Highways... 180
Licences 175, 435
Seizure of (poaching) 244
GUNPOWDER,
Registering premises, manufacturing, conveying, private use, hawking, selling, etc., Orders in Council 137, 140

PAGE

GUNPOWDER-MAKING TO COMMIT OFFENCE 362
GUNPOWDER, MALICIOUSLY INJURING BY 341

H.

HABEAS CORPUS—Definition 25, 44, 118, 449
HABITATION UNFIT... 256
HABITUAL CRIMINALS REGISTER 247, 444, 451
HABITUAL DRUNKARDS 131
HACKNEY CARRIAGES 287
HALF-PAY POLICE 405
HANDCUFFING 17
HANDWRITING—Experts 39
HANGING 457
HARBOURING CONSTABLE 62, 208, 287, 368
HARBOURING THIEVES, ETC. 287, 248
HARD LABOUR 340, 348
HARES 167, 168
Protection Act 170
HARES IN WARRENS 328
HAWKERS ACT—Licences, etc. 177
HAWKING—Sewing machines 177
HAWKINS, J.,
Decisions—
Gaming 172, 174
Police advocacy 41
Betting (*Hawke* v. *Dunn*) 89
HEARING BEFORE JUSTICES 382
HEMORRHAGE 454
HERSCHELL, L.C.—Licensing (*Sharpe* v. *Wakefield*) 312
HIDDEN PROPERTY, WATCHING 28
HIGH CONSTABLES 58
HIGH MISDEMEANOR 290
HIGH TREASON 290
HIGH SEAS 9
HIGHWAYS,
Article on—
Highways defined, Local Government Act, encroachment, engines, mills, kilns, quarries, trees, ditches, hedges, various offences ... ... 178—180
Bye-laws ... ... 183—184
Locomotives ... ... 183—184
Timber, rubbish, cattle, carts 181, 182
Undue user of road 185

HOMICIDE, PAGE
Definition 44
Murder, manslaughter, "necessity," killing burglar, negligence 185, 187
Statutory provisions 355
HOOPS, ROLLING 285
HOPBINES, INJURING 343
HOP-PICKING 260
HORSEFLESH REGULATION ACT 187
HORSE SLAUGHTERING 121
HORSE STEALING 328
HORSES FOR HIRE—Licences 260
HORSES, SERVANT TAKING CORN FOR 231
HORSES, SLAUGHTERING—Cruelty to 121
HOSIERY—Embezzling materials 134
HOSPITAL, REMOVAL TO 258
HOUSEBREAKING 188
Criminal investigation 27
Implements 30, 105, 188
Statutory provisions 333
HUE AND CRY (definition) 44
HUNDRED—Claims against 58, 270
HUNTING, TRESPASS 79
HUSBAND,
Coercion of wife 311
Desertion, leaving wife chargeable 229, 294, 296
Evidence of 37, 228
Husband and wife, goods, etc. 37, 311
Judicial separation, order of protection 229
Larceny 196
Receiving 263
Warrant necessary for arrest of 294, 296
Wife succouring 65
Wife's property 228, 311

I.

IDENTIFICATION OF PERSONS ... ...
IDENTIFICATION OF PROPERTY ... ...
IDIOTS 317

PAGE

IDLE AND DISORDERLY PERSONS 293
IGNORANCE OF LAW 43
ILLEGAL PAWNING 236
ILLICIT SALES (Statute) 366
ILLICIT SALES (Licensing) 207
IMMORAL PUBLICATIONS 200
IMPAIRING COIN 351
IMPLEMENTS OF HOUSEBREAKING 30, 333
IMPOUNDING CATTLE 120, 181, 282
IMPOUNDING OFFENCES 120, 182
IMPRISONMENT, COMMENCEMENT OF 18
IMPRISONMENT, SCALE OF 384
IMPRISONMENT FOR DEBT 123
INCAPACITY OF WITNESS 35
INCAPACITY (pension) 415
INCENDIARIES (detecting) 27
INCENDIARY FIRES 27, 78, 340
INCORRIGIBLE ROGUES ... ... 243—244, 298
INCREASES IN FORCE AND PAY 411
INDECENCY 313, 319
INDECENT ADVERTISEMENTS ACT 188
INDECENT ASSAULT 315
INDECENT EXHIBITIONS 296
INDECENT EXPOSURE IN STREET OR HIGHWAY ... 285, 296
INDIA BONDS, FORGING 348
INDICTABLE OFFENCES 188
INDICTABLE OFFENCES ACT (Statute) 380, 381
Information, summons, backing warrants 380
Remand, bail, commitment 381
INDICTMENT (definition) 44
INDICTMENTS, VEXATIOUS 300
INDICTMENTS, SEVERAL COUNTS (Larceny) ... 198, 327, 335
INDUSTRIAL SCHOOLS 189
INEBRIATES ACT 131
INEQUITABLE PAYMENTS (pensions) 420
INHABITANTS AND POLICE 59
INFAMOUS CRIME 315, 361
INFANT (definition) 45
INFANTS 108, 116
INFANTS (Betting and loans) 91
INFANTS, BODIES OF 30
INFANT LIFE PROTECTION ACT 109, 445

PAGE

INFANTS, EVIDENCE OF 38, 312
INFANTICIDE (Definition) 45, 109, 116
INFECTED PLACES 68
INFECTION (Term defined) 259
INFECTIOUS DISEASES (notification) 107, 256, 258, 259
INFORMANTS—police... 41
INFORMATION BEFORE JUSTICE 380
INFORMATION (definition) 45
INFORMATION, REWARD FOR 267
INFORMATION, ROBBERIES, ETC. (circular) 443
INITIALING DOCUMENTS 30
INJURED ANIMALS ACT 119
INJURED PERSONS, AID TO 454
INJURIES, MALICIOUS ... ... 226, 340—348
INQUESTS 190
Justices holding 190
Police at 117
Prisoners at 118
Right of holding... 191
INN, MEANING OF TERM 201, 363
INNKEEPER REFUSING ACCOMMODATION 363
INSPECTORS, GOVERNMENT 63, 402
INSPECTORS OF WEIGHTS AND MEASURES 308
INSTRUMENTS OF GAMING... ... ... 91, 297
INSULTING FEMALE... 296
INSULTING LANGUAGE 79
INTENT ("Malice") 226, 347
INTENT TO DEFRAUD (Forgery) 350
INTERMENTS ACT 272
INTERPRETERS 23
INTIMIDATION 191
INTOXICATING LIQUOR (defined) 211
INTOXICATING LIQUOR, SALE OF 207, 363
ITALIAN CHILDREN... 108

J.

"JERVIS'S" ACTS 188
JUDICIAL SEPARATION 229
JURIES... 192
Detention Act 192
Coroners' 191

PAGE

JURY, TRIAL BY (Summary Jurisdiction Act) 387
JURISDICTION 9
Of Admiralty under special statutes 339, 348, 354, 362
Of justices 193, 392
Of police, metropolitan, etc. 9
On boundaries of counties, on high seas, rivers, etc.... ...9, 392
JURORS... 192
JUSTICES, POWERS OF 192, 193
Acting singly 382, 384
Actions against 193, 303
Disqualification 373
Qualification 192
Refusing to act 193
Re police 400, 401
Under Licensing Acts 201, 363, 364, 372, 373
Summary Jurisdiction Acts 380, 394
JUVENILE OFFENDERS,
Offences by (Summary Jurisdiction Act) 386, 393

K.

KIDNAPPING (definition) 45
KITES—Flying in streets 285

L.

LABEL, protection by 156
LAMP, explosion of 457
LANCASHIRE (CANT'S) CASE—Pension 415
LANGUAGE,
Disgusting 14, 41
Flash 34
Insulting 8, 79
LARCENY—Definition 45, 193
LARCENY ... ... 193—199
Article on—
Definition, asportation, intent, larceny by trick, by finding, by misdelivery, by servants, by bailee 194, 195
Husband and wife, animals *feræ naturæ*, dogs, pigeons, gas, trees 196, 197
Receiving, recent possession, venue, indictment 198

LARCENY—*continued.* PAGE
Miscellaneous—
Larceny Advertisement Act 266
Police (by person in Queen's service or police) 335
R. v. Ashwell (judges divided in opinion) 195
R. v. *Collins* (empty pocket) 194
R. v. *Buckmaster*, "Welshing" 91, 195
Statutory provisions—
Larceny generally, of cattle, etc., from the person, burglary, etc., larceny in dwelling house, in shops, etc., embezzlement, false pretences, stolen goods, restitution, apprehension, previous conviction 327, 340
LARKS 100
LAW, COMMON AND STATUTE, Ignorance of 43
LAW OF LIBEL AMENDMENT ACT 200
LEADING QUESTIONS (Evidence) 40
LEGAL PRINCIPLES—Terms, etc. 43
LETTER BOXES, INJURING... 245
LETTERS,
Threatening 279, 356
Detecting 30
Stealing 245
Inspection of, authorized 245
LIBEL 199
LIBERTIES 62, 397
LIBERTY OF PETERBOROUGH 403
LICENCES,
Dogs 130
Game 116
Gun 175
Explosives 137
LICENSING ... ... 200—214
Article on—
Summary of statutes, transfers, renewals, public and private premises, place, entry on, illicit sales, drunkenness, gaming, closing houses ... ... 201—209
Exemptions and occasional licenses, fairs, races, special occasions, registers, sales, warrants ... 210, 211
Sharp v. *Wakefield*, *Penn* v. *Alexander* ... 212—213
Miscellaneous—
Clubs 205
Grants of Licences 371
Landlord's friends 209
Licensing fines (Police Act, 1890) 419

LICENSING—*continued.* PAGE
Miscellaneous—continued.
Night houses 209
Police evidence 202, 204
Records 377
Wholesale licences 208
Statutory provisions—
Alehouse Act, Licensing Act, 1842, Refreshment Houses Act, Wine and Beerhouse Act ... ... 363—366
Licensing Act, 1872 and 1874 ... ... 366—375
Beer dealers' retail licences 379
LINCOLNSHIRE SUPERANNUATION FUND 405
LIQUOR, INTOXICATING, DEFINED 211
LOADED ARMS 207, 356
LOBSTERS 153
LOCAL AUTHORITIES (general definition)... 45
Weights and Measures Act 309
Licensing 210
LOCAL CONSTABLES... 405
LOCAL GOVERNMENT ACT, 1888 220
County council, appointment of 221
Standing joint committee, appointment of 222
Home Office circular, *re* Treasury grant 436
LOCK-UP HOUSES 398, 403
LOCOMOTIVES,
Light Locomotives Act 214
Lights on 215
On highways, rules for working, speed, smoke, weight, bye-laws 184, 185
See also LIGHT LOCOMOTIVES.
LODGERS, LARCENY BY 336
LODGERS (Licensing Acts) 369
LODGERS PROTECTION ACT 127
LODGING HOUSES, COMMON 114
LODGINGS,
Fruit pickers' 260
Infectious diseases 258
LODGING OUT (Vagrants) 296
LOITERING TO COMMIT OFFENCE 338, 347, 362
LONDON (CITY) POLICE 10
LONG FIRM FRAUDS 33, 148
LORD'S DAY ACT 274

PAGE

LOTTERIES 222, 223
LUNATICS—escape and recapture ... ... 223—226
Female, abusing 225
Prisoner 225
Mechanical restraint 225
Observing in prison 226
Statute—Lunacy Act 223

M.

MACHINERY, MALICIOUS INJURY TO 342
MACKEREL, SALE ON SUNDAY 275
MAD DOGS 129
Bite of 456
MAGISTRATES,
Assaults on 79, 358
Powers of 192, 380, 394
See also JUSTICES.
MAGAZINE 140
MAGNA CHARTA 81
MAIMING 80
MAIMING CATTLE 345
MALICE—Defined 45, 226, 262
"Express or implied" 186
In cases of arson 78
In cases of malicious injury 226, 347
In murder 186
MALICIOUS DAMAGE ACT 340
MALICIOUS DAMAGE 226
To cattle 345
Damage exceeding 5*l.* 346
Damage to railways 262
MALICIOUSLY KILLING ANIMALS 226
MANDAMUS—Definition 45
MANSLAUGHTER 186
Bail in cases of 84, 190
Statutory provisions regarding 355
MANTRAPS 227
MANUFACTORIES, LARCENY IN 334
MANUFACTURES, MALICIOUS INJURIES TO 342
MARGARINE ACT 164

	PAGE
MARGARINE IN WRAPPERS	156
MARINE STORE DEALERS	227
MARKET OVERT	265
MARKETS IN INFECTED AREAS	70
MARKETS, SCALES IN	309
MARKETS AND SLAUGHTER HOUSES	121, 260
MARRIAGE—legal age	312
MARRIAGES, FORGING REGISTERS OF	349
MARRIAGE LICENCES, FORGING	349
MARRIED WOMAN—Separation	229
MARRIED WOMEN'S PROPERTY ACT	228
MASTER AND SERVANT	230
Characters, false characters, etc.	230
Embezzlement of materials by workmen	135
Misappropriation of corn, etc.	231
Neglecting servant or apprentice	72
Payment of wages in public-houses	135
Truck Act	135
MATS, SHAKING	286
MAXIMS FOR POLICE OFFICERS	3
MEAT, UNWHOLESOME	258, 281
MEDALS, UTTERING AS COIN	352
MEDICAL AID TO PRISONER	18
MEDICAL EXAMINATION—Pension	416, 444
MEDICAL EXAMINATION—Woman	116
MEDICINES—Food and Drugs	155
MEETING, POLICE AT	133
MENACES, DEMANDING MONEY WITH	332
MERCHANDISE MARKS ACT	231
MERCHANT SHIPPING ACT	231
MERITORIOUS ACT—Gratuity	405
MERRY-GO-ROUND	234
METAL DEALERS	232, 249
METRIC SYSTEM—Prisoners...	451
METROPOLITAN DISTRICT—Area	379, 428
METROPOLITAN POLICE, RAIDS BY	91
METROPOLITAN POLICE	9, 424
MIDDLESEX SESSIONS	148
"MIGNONETTE" CASE	187
MILITARY DESERTERS—Rewards	438
MILITARY, ETC., RELATIONS WITH	13
MILITARY OFFENDERS	123—125

PAGE

MILITARY SUPPRESSING RIOTS 268
MILITARY UNIFORM... 293
MILITIA 75
MILITIA ABSENTEES 124
MILK 162
Adulteration of 157
Average 157
Cream abstracted... 157
Sale on Sunday 275
Skim 155
MILK SHOPS ORDER... 69
MINES 233
Disused shafts 435
Employment in 233
Firing 344
Larceny from 331
Malicious injuries 344
MINT,
Coinage cases 353
Conveying tools from 353
MINUTE, POOR LAW BOARD 299
MISAPPROPRIATING CORN BY SERVANT 231
MISDELIVERY 195
MISDEMEANANT 353
Definition... 46
MISDEMEANOR 7
Arrest for... 7
High misdemeanor 290
Meaning of term... 6
MISPRISION OF FELONY—Definition 44
MISPRISION OF TREASON 290
MITIGATION OF PUNISHMENT 19
MOCK AUCTIONS 33, 195
MOCK HUNT ON HIGHWAY... 180
MODE OF ARREST 8
MONEY,
Demanding with menace 332
Obtaining by false pretences 336
MONTHLY RETURNS OF POLICE FORCE 400
MOTIVE FOR CRIME 27
MULTIPLE OF BUSHEL 305
MUNICIPAL CORPORATIONS ACT 48

PAGE

MUNICIPAL ELECTIONS, VOTING AT 413
MURDER 186
By suicide... 272
Conspiring to 116
Investigation of 26
Statutory provisions 355
MUSHROOMS 198
MUSIC—Single entertainment 278
MUSIC AND DANCING 233, 278
MUSIC HALLS 278, 331
MUSTARD 155
MUZZLING DOGS 129

N.

NEAR SIDE OF ROAD 183
NECESSITY, DOCTRINE OF 186
NEGLECT OF DUTY 14, 61, 396
NEGLECTING TO MAINTAIN FAMILY 294
NEGLIGENCE, CULPABLE 187
NESTS 99
NEW LICENCES 211, 371
Definition 211, 379
NEWSPAPER LIBEL ACT 200
NEWSPAPERS, CRYING OF 275
NIGHT—Definition 46, 169
NIGHT HOUSES—licences 211
NIGHT POACHING 169
NISI PRIUS—meaning of term 81
NOTES, CONSTABLE REFERRING TO 14
NOTICE OF ACTION 15
NOTICES—service of,
Army Act (Reserve Forces) 75
Licensing Act 203, 363
Public Health Act (nuisances)... 257
NOTIFICATION OF INFECTIOUS DISEASES 259
NUISANCES DEFINED ... ..., 46, 233, 256
Article on—
Public nuisance, obstruction (Trafalgar Square), village green, merry-go-round, encampment, savage animals, premises, police duties 234
Offensive trades, steam whistles, procedure 235

NUISANCES—*continued.* PAGE
Public Health Act—
Filthy or overcrowded premises, black smoke, notices, police powers, offensive trades 256
NUMBERING HOUSES 280

O.

OATH, FORM OF—Constables 52
OATH OF WITNESS 35
OBSCENE BOOKS 235
OBSCENE PRINTS IN STREETS 285
OBSCENE PRINTS, ETC., sending by post 255
OBSTRUCTION (Betting Acts) 91
OBSTRUCTIONS IN STREETS ... ... 281—284
OBSTRUCTIONS ON RAILWAYS 344, 357
OCCASIONAL COURT HOUSE—Definition... 387
OCCASIONAL LICENCES 210, 211, 377
Definition... 379
OFFENCES, COMPOUNDING... 115
OFFENCES AGAINST THE PERSON—Statute ... ... 355—362
OFFENCES (ARREST) SUMMARY OF 10
OFFENSIVE TRADES... ... ...234, 235, 257
OFFENSIVE WEAPONS—Vagrants... 207
Being armed with, etc. 333
Poaching 169
OLD BAILEY 81
OLD METAL DEALERS 232, 249
"OPEN COURT" 20, 40, 273, 387
ONUS PROBANDI 46
OPIUM, TINCTURE OF 156
ORDERS IN COUNCIL—Explosives 140
ORDERS, SERVICE OF 14
OVERCROWDING HOUSES 256
OVERHANGING BRANCHES... 197
OVERSEERS 75
To prepare lists (parish constables) 56
OWNERSHIP—*Market overt*... 265
OYSTERS 153
Stealing 330
OYER AND TERMINER 81

P.

PAGE

PACKET BOATS 206
PADRONI—Italian children 108
PALMERS 32
PARISH CONSTABLES ... ... 56—57
Appointment, payment, etc., for certain parishes only ... 56
To be under authority of chief constable 57
PARISH—Persons chargeable 294, 296, 299
PARK, PUBLIC 260
PARROTS 120
PASTURAGE—Highway 182
PATROL DUTY 11
PAWNBROKERS 236, 266
Restoring property 265
Shops—market overt 266
PAWNING—Arrest 236
PAWNING, ILLEGAL 32, 236
PAY, INCREASES IN 411
PAYMENT OF WAGES 135
PEACE—Assaults on peace officers 15, 80
PEACE, BREACHES OF 8
"PECULIAR PEOPLE" 186
PEDLARS ... ... 236—239
PEDLARS ACT, 1882—United Kingdom 239
PEDLARS—Vagrants 295
PEDLARS' CERTIFICATES 237
Forfeiture, production, etc. 239
Exempted persons 237
PENAL SERVITUDE 240
Minimum 117
PENALTIES—Licensing—Moiety to police... 374
Summary Jurisdiction Acts—Proportionate payments, etc. 383—384
PENSIONS,
Ordinary and special 414, 426
Home Office Circular 437
Reduction, assignment, etc. 416
PERAMBULATOR—Not a carriage 284
PERJURY 240
PERRY—Licensing 365
PERSON, LARCENY FROM—Statute 331

PAGE

PERSON, OFFENCES AGAINST—Statutory provisions ... 355—362
PERSONATION 146, 240
Rape 315
PETERBOROUGH, SOKE OF 403
PETROLEUM 240
Hawkers Act, 1881 241
In locomotives 215
PETTY SESSIONS 83
PETTY CONSTABLES—Appointment 59, 395
PHARMACOPŒIA, BRITISH 156
PHARMACY ACT 78, 244
PIANO—Hired... 266
PICKLOCKS, POSSESSION OF 297
Vagrants 297
PICKPOCKETS... ... ... 28, 32
PIGEONS 197
PIGSTYES IN STREETS 286
PISTOL—A firearm 175
PITCH AND TOSS 173
"PLACE" FOR BETTING 89
"PLACE," PUBLIC—Gaming 173
"PLACES," PUBLIC—Various statutes 173, 260, 297
PLAYS—Acting of 278
PLEASURE BOATS 260
PLEURO-PNEUMONIA 67, 71
PLOUGHING MACHINES—Exemption 179
POACHERS, CRIMINALITY OF 171
POACHING,
Poaching Prevention Act—Powers of police 242
Statute—Night poaching 169
POCKET, EMPTY—Attempt to pick... 194
POCKET PICKING 28, 32
POISONED FLESH 245
POISONED GRAIN 245
POISONING,
Criminal investigation 27
Statutory provisions 357
POISONING FISH 152
POISONS 244
Antidotes to 457
Sale of 244

POLICE ACTS, PAGE
High Constables Act 58
Parish Constables Act 57
Police Disabilities Removal Acts 412
Police boroughs 48
Police Returns Act 413, 453
Police (Property) Act, 1897 ... ... 245, 432
Police Superannuation Act, 1865 ... ... 398—405
POLICE (ENGLAND) ACTS ... ... 395—404
Police Act, 1839—Establishment of forces 395
Police Act, 1840 398
Police Act, 1856 401
Police Acts, 1857 and 1859 404
Police rules, qualification and pay 406
Police Act, 1890—Superannuation 414
Police Act, 1893... 429
POLICE,
Establishment, consolidation, superannuation—
Appointment of chief and petty constables ... 59, 395
Appointment of deputy and superintendents ... 60, 396, 400
Forces established 1, 59, 62, 395, 399, 401
Origin of 5
Powers and duties ... ...1—15
Police (England) Acts 59, 395, 405
Qualification, etc. 406
Rates of pay 407
Secretary of State's Circulars, 1889 to 1897 453
Statistics 10
Miscellaneous—
Actions against 34, 413
Aid—Circular 422, 443
Allowances at courts—Circulars 24, 446, 448
Areas... 428
As advocates 41
Assaults 80, 248
Assisting bailiffs 304
Assuming dress of 62, 397
Claim to reward 267, 425
Courts 13
Circulars—Home office ... ... 433—452
City of London 10
Districts—expenses in 46, 62, 400
Embezzlement and larceny 335

POLICE—*continued.* PAGE

Miscellaneous—continued.

Employment, restraint on 15
Entry on licensed premises... ... ... 207, 377
Entry on railway premises... 261
Extraordinary expenses 397
Evidence 14, 41
Fees 21, 422, 425, 439
Firemen 421, 429
Game—Trespass, etc. ... ... 166—171
Gaming—Suppression of 12, 91, 172, 173, 297, 369
Gazette 123
Grant—Treasury 63, 402, 419
Home Office Circulars (1889—1897) 433
Increases in force 411
Informants 41
In riots 269
Inspection—Government 1
Inspectors—Government—of constabulary ... 1, 63, 402
Inquests 190
Jurisdiction 9, 60, 396
Magistrates 381
Maxims 3
Metropolitan—Jurisdiction, etc. 9
Obstructions... 80
Officers—qualifications for.. 406
Pay, increases of ... ... 411—430
Pay, rates of... 407
Pensions 414, 426
Powers—Poaching Prevention Act 242
Powers—Prevention of Crimes Act 246
Proportion of population ... ... 59—395
Publicans harbouring—Bribing 14, 287, 368
Public meeting 133
Railway premises 12, 261
Rate—Borrowing on, etc. ... ... 398—399
"Ranks"—Police Act, 1893 430
Reciprocal powers 60, 401
Regulations—Public Health 261
Returns 61, 400, 413, 453
Rewards 20, 266, 425
Rules of conduct, maxims, etc. 3
Stations 398, 403

POLICE—*continued.* PAGE

Miscellaneous—continued.

Stations, plans for—Circular 442
Superannuation 414, 426, 437
Supervision—Prevention of crime... 248
Travelling—Cheap Trains Act 262, 434
Voting 133, 402, 412
Witnesses 41
See also CONSTABLES, *ante.*

POLICE ACT, 1890—Superannuation.—**Sectional references.**

Acts referred to, repealed, etc.—

Acts repealed, s. 36 and 4th sched.; local Acts, s. 31; Police (England) Acts, 5th sched. ... ... 424—429

"Aided" Forces—

Agreements, s. 25; form of, circular, July, 1894 (p. 443); *Rotherham case* (disputed contribution), s. 25 422

Appeal—

Re discipline, s. 4; *re* pension, s. 11; *Cant's case* (*note*), s. 4; finality of decisions, s. 5; appeal in boroughs, s. 5 ... ... 415, 417

Approved Service—

Reckoning of, s. 4; "approved," s. 4; former in United Kingdom, "removal," ss. 4, 30; *Cant's case note*, s. 4; army reserve, s. 4; existing constables, ten years, three years, service disallowed, s. 30; service under age, s. 4; in several capacities, civil, etc., s. 14; certificate of, s. 4; non-acceptance of Act, s. 30; resuming service, s, 5 ... ...415, 417, 423

Areas and Authorities, Acts, etc.—

Police areas, etc., s. 33; metropolitan, s. 32; city, s. 39; chief officers, s. 12; 3rd sched.—Irish force; 2nd sched.—Scotch force, s. 15 (*note*) ... ... 417—428

Finance—

Financial powers, s. 33; pension fund, s. 16; fees, ss. 23—24; see also pp. 436, 439; fines, ss. 15, 16; investments, s. 18; customs and excise, s. 17; rates, parochial rates, s. 13; certificate of efficiency and Exchequer contribution, s. 17; rateable deductions, s. 15; stoppages, s. 15; rewards, gratuities, meritorious act, ss. 24—34 ... ... 417—425

POLICE ACT, 1890—*continued.* PAGE

Medical—

Certificates, ss. 1, 5; examination, s. 5; *Warwickshire case* (*note*), s. 5; incapacity, s. 5; vicious habits, s. 6; sickness, s. 20 ... ... 414, 421

Penalties—

Dismissal without pension, s. 10; reduction of pension, s. 6; fraud, s. 9; vicious habits, s. 6; forfeiture of pension, s. 8; deductions returnable, s. 21 ... 417—421

Pensions and Gratuities—

Right to pension, s. 1; age limits, s. 1 and 1st sched.; scales, ordinary and special (A.B.C.D.) s. 3, sched. 1; new scale, s. 3; pension fund, s. 16; guarantee, s. 19; assignment, s. 7; forfeiture, s. 8; reduction, s. 6; right of dismissal, s. 10; apportionment, inequitable payment, arbitration, ss. 15—17; widows, children, gratuities, s. 2, 1st sched.; for meritorious act, ss. 24, 34; fire police, s. 22; chief officer, s. 12; ranks, increased pay, etc., 1st. sched. (and p. 430); saving for existing pensions, s. 35 (Home Office Circular, October, 1890, p. 437) ... ... 414—427

Provisional Measures—

Provisional orders, s. 22; temporary and supplemental provisions affects "existing" funds and constables, ss. 30, 35; declaration of former service, s. 26, 2nd sched.; Home Office circulars (pp. 39, 43, 437) 421—424

Schedules, etc.—

1st sched.—pensions, gratuities, general rules, "rank"; 2nd sched.—declaration, former service; 3rd sched.—areas, etc.; 4th sched.—Acts repealed; 5th sched.—Police (England) Acts; title, extent, dates, definitions, ss. 34, 37, 38—49 ... ... 426—443

POLICE ACT, 1893—

Fire duty, ss. 1, 8; pension increased, s. 3; parochial rates, s. 4: investments, s. 5; "rank" amendment, constables reduced or promoted, s. 6; circular (August, 1893) ... ... 429—431

POLITICAL MEETINGS 133

POLLING BOOTHS 133

PONDS, MALICIOUSLY INJURING 344

POOR LAW BOARD MINUTE 299

POPULATION, PAGE

Proportion to constables... 59

Boroughs of 10,000 62

POPULOUS PLACE 211

POST-OFFICE OFFENCES 245

POST-OFFICE (PROTECTION) ACT 245

POUND BREACH 182, 282

POUND KEEPER'S COSTS 182

POUND, POWER TO PROVIDE (Towns Police Clauses Act) ... 282

POUND—Sale of animal (Towns Police Clauses Act) 282

POWERS OF POLICE—Generally (Chapter I.) ... ... 5—10

PREACHING 246

PREJUDICE OF PURCHASER (Food and Drugs Act) 154

PREMISES, LICENSED—Entry on 377

PREMISES UNFIT FOR HABITATION 256

PREVENTION OF CRIMES ACT 246

Convicts, reporting, registers, "suspects" 247

Arrest, supervision, harbouring thieves, assaulting police, metal dealers, convicts' children, vagrants 248, 249

Stolen property, previous convictions, receiving—Prevention of Crimes Act, 1879—Reporting, chief officer, etc. 250, 251

PREVENTION OF CRUELTY TO CHILDREN 110

PREVIOUS CONVICTIONS 250

Evidence of 39

In larceny... 339

In coinage cases 354

Vagrants 294, 298

PRINCIPALS IN CRIME 65, 326

PRISONERS ... ... 16—18

Questioning, cautioning, confessions, searching 16

Handcuffing, treatment, disposal of, etc., female prisoners, stolen property... 17

Expenses, medical aid, maintenance, food, etc., date of sentence, behaviour towards, bail, rescue, escape 18

Miscellaneous—

Commitments, costs, etc. 21, 383

Evidence 35

In moribund condition 18, 435

Offences by 252

Children of 249

Dumb or insane 225

Letters of, legal advice, etc. 440, 444

Medical examination, assaults 444

PRISONERS—*continued.* PAGE
Miscellaneous—continued
Re-arrest on discharge 445, 447
Photography 448
On ticket of leave. *See* CONVICTS.
PRISONS 252
PRISON BREACH 18
PRIVATE FRIENDS ON LICENSED PREMISES 209
PRIVILEGED COMMUNICATION—Definition 46
PRIVY SEAL, FORGING 348
PRIZE FIGHTS 79, 253
PROCURATION OF WOMEN AND GIRLS 312, 316
PROJECTIONS ON PAVEMENT 284
PROOF, BURDEN OF—Term... 6
PROPERTY,
Identification of 17
Malicious injury to 340
On prisoner 17, 391
Ownership of 265
Watching hidden 28
PROSECUTIONS 19
PROSECUTION OF OFFENCES ACT... 20
PROSECUTIONS, TREASURY... 20
PROSECUTORS AND WITNESSES—Expenses of 21
PROSECUTOR'S COSTS—Defendant paying 21
PROSECUTOR'S EXPENSES 20
PROSTITUTES,
Obtaining refreshments 208
In streets 285
Vagrants Act 295
PROTECTION OF WOMEN AND GIRLS ... ... 312—320
PROTECTION OF CHILDREN ... ... 108—112
PROTECTION OF CONSTABLES 15
PROTECTION ORDER 229
PROVISIONAL LICENCES—New premises 371
PUBLIC BATHING 288
PUBLIC BUILDINGS, SETTING FIRE TO 348
PUBLIC DINNER, LICENSING 210
PUBLIC GROUNDS 260
PUBLIC HEALTH ACT ... ... 253—261
Sanitary provisions, urban districts, lodging-houses ... 254, 255
Nuisances, offensive trades 256, 257
Unsound meat, infectious diseases 258

PUBLIC HEALTH ACT—*continued.* PAGE
Epidemics, public grounds, markets, houses, boats, procedure 260
Fruit pickers' lodgings, police regulations, Police Clauses Act, Public Health Act, 1883 ... ... 260, 261
PUBLIC HOUSE—A public resort 287
PUBLIC HOUSES,
Closing in riots 269
Paying wages in 135
PUBLIC MEETING, DISTURBANCE AT 79
PUBLIC ORDER 12
PUBLIC PLACE, GAMING IN 173, 297
Poaching 243
PUBLIC PROSECUTOR 20
PUBLIC STORES 261
PUBLICAN,
Drunk on own premises... 368
Entertaining friends 209
Harbouring constable 368, 387
PUNISHMENTS,
Constables 60, 405
Larceny 327
Vagrants 294, 298
PURSE TRICK... ... ... 33, 194
PUTATIVE FATHER—Bastardy 88

Q.

QUACK DOCTORS 32
QUALIFICATION FOR POLICE OFFICERS 406
QUARRIES 179
QUARTER SESSIONS 82, 397
Appeals 82
Attendance at 60, 397
Offences not triable at 82
QUEEN'S EVIDENCE 35
QUESTIONING OF PRISONER BY CONSTABLE 16
QUESTIONS, LEADING 40

R.

RABBITS,
Coursing in inclosure 120
As "game," ground game, killing, etc. 169, 176
Poaching, night poaching, stealing 169, 171
Stealing (statute); "nicking" 197, 338

PAGE

RABID ANIMALS, BITES OF 456
RABIES ORDER 179
RACES, OCCASIONAL LICENCES AT 210
RAIDS BY POLICE 90
RAILWAYS 261
Article on—
Obstructing officials, police interference, passenger alleging robbery, *Cobb's case*, drunkenness, injuries to, cheap trains 261, 262
Miscellaneous—
Endangering lives of passengers 358
Interference of police 13
Liability providing trains for prize fighters 253
Malicious injuries 262, 344
Obstructions 357
Station yard, cabs, etc. 287, 288
RAILWAY CARRIAGE, a public place 173, 297
RAILWAY CARRIAGES, Malicious injury to 344
RAILWAY PLATFORM, a public place 243
RAILWAY SERVANTS, Larceny by, "finding" 195
RAILWAY STATIONS, Setting fire to 340
RAPE 262
Boy defendant 312
Criminal investigation 29
Personation 315
Statement 262
Statutory provisions 315, 359
RE-ARREST OF DISCHARGED PRISONER 445, 447
RATE—Police rate 39, 83, 99, 420
RATES OF PAY—Police 407
RAT TRAPS, Setting of 226
REASONABLE EXCUSE—Education 134
RECEIVING STOLEN GOODS 26, 198, 250, 263
Evidence as to previous offences 251
Receivers, where triable 263
Recent possession 198
Statutory provisions 337
Wife receiving 199
RECIPROCAL POWERS—Police 401
RECOGNIZANCES,
Definition 46
Statutory provisions 385

PAGE

RECORD OF CONVICTIONS—Licensing 370, 377
RECREATION GROUND—Enclosing 234
RECRUITS, Attestation of 74
RE-EXAMINATION 40
REFORMATORIES 263
REFRESHMENT HOUSES—Definition 205
REFRESHMENT HOUSE ACTS, ... 364
Licences—Statutory provisions... 364
REFUSE, throwing in street 285
REFUSING TO BE MEDICALLY EXAMINED 416
REGISTERS,
Births and Deaths ... ... 101—115
Forgery of 349
Of charges 410
Of criminals 247
Of licences 211, 371
RELIEF—Fraudulent application 275
RELIEF OF VAGRANTS 299
RELIEVING OFFICER 295
RELIGIOUS DISPUTES 102
REMANDS 46
REMISSION OF SENTENCES 240
REMOVAL FROM PREMISES... 12
RENEWAL OF LICENCES 203
RENT, distraint for 126
REPEATED CONVICTIONS, RECORDS, ETC—Licenses ... 370, 377
REPORTS, etc., by chief constable 61, 400, 411
By superintendents 61, 400
REPUTED THIEVES 287
RESCUE 18, 264
RESERVE FORCES 75
RESIGNATION... ... ... 62, 404
RESIGNING WITHOUT NOTICE 61, 194, 404
"RESORTING"—Betting 89
RESTITUTION OF STOLEN PROPERTY 264, 337
RESTORATION OF APPARENTLY DROWNED 322
RESUMING DUTY—Police Act, 1890 416
RETAIL LICENCES 206
RETAKING—Warrants 301
RETREATS FOR DRUNKARDS 131
RETURNS OF CRIME ACT, 1892 ... ... 61, 400
REVENUE OFFICERS, Assaulting 80

PAGE

REVISING BARRISTERS 13, 83
REWARDS 20, 26, 266
For deserters 123, 425
To police 20, 21, 267
Statutory provisions, advertising, etc. 266, 338
RIDING ON FOOTWAY 180, 284
"RING-DROPPING" 33, 195
RINGING BELLS 113, 195, 285
"RINGING THE CHANGES" 33
RIOTS—Definition 46
Article on—
Defined, Salvation Army, military force, wrecks, Riot Act, closing houses, special constables, rioting, affrays, Riot (Damages) Act, claims, etc. ... ... 267—269
RIOTERS, Malicious injury by 270, 341
"RIOTOUS"—Term 12, 131, 207, 368
RIVERS, MALICIOUS INJURY TO 344
ROAD, Rule of... 183
ROBBERY 193
ROGUES, VAGABONDS 293, 296
Incorrigible 294, 298
ROOF, THROWING FROM 286
ROOKS, Stealing (trees damaged, etc.) 196
ROULETTE 173, 174
ROUT 267
RUBBISH, Shooting of 286
RULES BY SECRETARY OF STATE—*Police* 406
RULES OF CONDUCT (Constables), MAXIMS, etc.... ... ...
RUM 163
RUSSELL ON CRIMES 148
RYE 403

S.

SACRILEGE 105, 270
Definition 47
SAILORS' POCKET BOOK 324
SAILORS, ROYAL NAVY 76
SALE OF COAL ACT 310
Powers of inspector 301
SALE OF GOODS ACT 266

PAGE

SALES OF LIQUOR, EVIDENCE OF... 374
SALMON FISHERIES 149
SALVAGE OF WRECKS 321
SALVATION ARMY 267
SAND GROUSE 100
SANE PERSON 43
SANITARY PROVISIONS 254
SAVAGE DOGS 128
SCAB IN SHEEP 71
SCALDS 456
SCALES, FALSE (*Bakers*) 104
SCALES IN MARKETS 309
SCARING BIRDS 176
SCHOOLMASTER—Chastising scholar 79
SCIENTER (dog) 128, 283
SCOTLAND—Acts inoperative 340, 354
SEA, "ARM OF" 150
SEA BANKS, MALICIOUS INJURY TO 344
SEA, OFFENCES ON (*Admiralty, etc.*) 9, 231
SEA FISHERIES 152, 339, 348, 362
SEAMEN 271
Assaults on 8, 35
SEARCH (Occupier consenting) 302
SEARCH WARRANTS... ... ... 211, 302
Explosives 136
SEARCHING PREMISES—Police authority... 249
Prisoners 16
SECRECY 9, 11
SECRET DISPOSITION OF BODY OF CHILD 30
SEDITION 271
SEDUCTION 314
SEEDS, ADULTERATION OF (Dyeing of, etc.) 66
SELF-DEFENCE (Assault) 79
Homicide 185
"Necessity" 186
SENTENCES—Penal servitude, etc. 240
SENTRIES, Conversing with 76
SEPARATION ORDER... 229
SERGEANT—Qualification 406
SERVANTS 230
Characters of 230
Larceny by 195, 231

SERVANTS—*continued.* PAGE
Misappropriating corn 231
Treatment of (*Statute*) 357
SERVICE—"Approved" 415
SERVICE, Certificate of 415
SERVICE (Superannuation). *See* POLICE, *ante.*
SERVICE OF ORDER 14
SERVICE OF SUMMONS, Proof of 13
SESSIONS ... .82, 83
"SETTING FIRE TO"—Term 78
SEWERS 261
SEWING MACHINES—*Hawking* 177
SHEEP, Exposing shorn 70
SHEEP-POX—Scab, etc. 71
SHEEP STEALING—Detecting 28
SHELL FISHERY 152
SHELTERS—Cabmen 288
SHERIFF, Reading Riot Act... 260
SHERIFF'S OFFICERS 304
Assistance to 13
SHIP AT SEA, Offences on 9
SHIPS, Larceny from 334
Malicious injury to 345
SHIPWRECKED GOODS—*Dealing with* 321
SHIPWRECKED PERSON, Impeding 356
SHIPWRECKS 321, 345
SHIRT PINS 32
SHOP ASSISTANTS 146
SHOP BOUNCING 32
SHOP—City of London 266
SHOP—Definition 146
SHOP HOURS REGULATION ACT 146
SHOOTING AT PERSON 80, 356
SHOOTING GALLERIES 260
SHOOTING RUBBISH... 285
SHOPKEEPER—Obligation as to sale 159
SHRUBS—Stealing of... 197
SICKNESS, Stoppages for (superannuation) 421
SICK PERSON, Evidence of 39
SICK PERSONS—Depositions 39
SIGNALS, Exhibiting false, to ship 345
SILVESTER RESTORATION SYSTEM 322
SINGING BIRDS—*Larceny* 329

PAGE

SIX-DAY LICENCES 372
SKELETON KEYS 31, 297
SKETCHES—"Musical" 278
SKIDPANS ON WAGGON WHEELS 184
SKIN—Stolen 197
SKITTLES 175
SLANDER—Definition 47
SLANG TERMS 33, 34
SLAUGHTER HOUSE 121
Unlicensed 121
SLAUGHTERING CATTLE 283
Horses—Cruelty to 121
SLEEPING OUT, VAGRANTS 296
SLIDES IN STREETS 285
SMALL-POX (Inoculation) 259, 293
SMOKE—Black smoke (*furnace to consume, etc.*)... 257
Locomotives 185
To pass through in fires... 457
SMUGGLED GOODS 122
SNOW-THROWING FROM ROOF 286
SOAP BOILING 257
SODOMY 36
SOKE OF PETERBOROUGH 403
SOLDIERS 75
Billeting of 93
Buying uniform from 74
Drunk, conduct of police towards, arrest, etc. 75, 76
Liability for bastardy 74, 88
Removing caps in courts; *duty under arms* 74
To maintain wives 88
SOLICITOR'S ADDRESS 40
SOLICITOR TO TREASURY 20
SOLITARY CONFINEMENT 340
SOOT WITH ARSENIC 78
SPANKING THE GLAZE 31
SPARRING—Exhibition of skill 253
SPECIAL OCCASIONS—Licensing 210
SPECIAL CONSTABLES (Chap. IX.),
Appointment of, powers of, justices to control, assaulting of, refusing to serve, discontinuance 51, 54
Appointed in riots 269

PAGE

SPIRITS—Definition 395
Dilution of 163
Licences 206
SPIRITUALISTS—Vagrants 148, 296
SPLINTS, USE OF 454
SPRAINS 455
SPRING GUNS 227, 357
STAFF, USE OF 11
STAGE PLAYS 278
STAMPING WEIGHTS AND MEASURES 307
STANDARDS OF WEIGHTS 306
STANDING JOINT COMMITTEE 222
"STARRING THE GLAZE" 31
STATEMENTS 29, 36
Of prisoner 14, 16, 35
In rape cases 262
STATION HOUSES 62, 398, 403
STATING SPECIAL CASE 389
STATISTICS OF CRIME 402
STATISTICS, POLICE AND CRIME 10
STATUTE LAW—Term 43
STATUTORY DUTIES—Police 12
STEAMBOATS—Refreshments 206
STEAM ENGINE, INJURING 342
STEAM WHISTLES 235, 256
STEPHEN, J. (Homicide) 186
STICK AND BUTTON TRICK 33
STILL-BORN CHILD 101
STIPENDIARY MAGISTATES—Powers 384, 388
STEALING. *See* LARCENY.
STOLEN PROPERTY,
Advertising reward for 20, 266
Bonâ fide purchaser 166
Circulating description of 443
Identification of 17
Police authority to search for 249
Receiving... ... ... 26, 198, 250, 263
Restitution of 264
Trial of receivers of 337
STONE-THROWING AT TRAINS 262, 346
STORES, PUBLIC 261

PAGE

STREET,
- Defined ... 282
- Goods in ... 285
- Names of, repairing, etc. ... 280
- Obstructions in, projections, etc. ... 281, 284
- Preaching in ... 246
- Various nuisances in ... 282

STRONG ROOMS ... 398

"STRUCK BY LIGHTNING" ... 76

SUB-SHERIFF—Riot Act ... 269

SUBORNATION OF PERJURY ... 240

SUBPŒNAS—Definition ... 47

SUDDEN DEATHS, CASES OF ... 11

SUICIDE ... 271

SUMMARY OF OFFENCES ... 10

SUMMARY JURISDICTION (*Synopsis of Act*) ... 19

SUMMARY JURISDICTION,
Article on—
- Summons, warrant, bail, witnesses, trial, hearing, demand, appeal, open court ... 272

SUMMARY JURISDICTION ACTS—(*Statutory Provisions*) ... 281
- Act, 1848 ... 272, 381
- Act, 1879 ... 19, 272, 384
- Act (Process), 1881, Act, 1884 ... 394
- Bail ... 20, 390
- Fines, fees remitted ... 385
- List of indictable offences triable summarily ... 393
- Occasional court-house ... 387
- Offence by child or young person, whipping, etc. ... 385, 386
- Warrants ... 388

SUMMARY JURISDICTION (MARRIED WOMEN) ACT ... 229

SUMMONSES ... 13, 381
- Justice issuing ... 381
- Service of, etc. ... 13
- Statutory provisions ... 381—394

SUNDAY ... 274
- Arrest on ... 8, 275
- Closing hours ... 209
- Closing (Wales) ... 211
- Commitment warrant ... 275
- Observance Act ... 274
- Playing cricket on ... 275
- Pawnbroking ... 236

	PAGE
SUNDAY—*continued.*	
Search warrant	302
Sporting on	166, 275
Warrants	8
SUNSTROKE	456
SUPERANNUATION. *See* POLICE ACT, 1890, *ante.*	
SUPERINTENDENT	60, 396
Evidence—licensing	203, 204
Number of	400
Officers attending sessions	400
Qualifications	406
Returns by	400
SUPERINTENDING CONSTABLE	261
SUPPRESSION OF BROTHELS	125, 320
SURETIES (bail)	84
SURETIES TO BE OF GOOD BEHAVIOUR	276
SURETIES TO KEEP PEACE	276
SUSPENDED ANIMATION	457
SUSPENDING CONSTABLES	405
SUSPECTED PERSONS—Vagrants	298
SWANS, EGGS OF	244
SWEARING, PROFANE	277
SWEEPS	113
SWEEPS EMPLOYING CHILDREN	112
SWEETS—Wines	206, 211
SWINDLING TRICKS	33
SWINE	67
SWINE FEVER	71
SYNCOPE	456

T.

TATTERSALL'S INCLOSURE	90
TAVERN—Definition	201
TEA, "EXHAUSTED" (Adulteration)	161
TELEGRAM—Disclosing contents	277
TELEGRAPHS	277
TELEGRAPH WIRES, INJURING	345
TEMPER, CONSTABLE KEEPING	3
TEMPER, FRAILTY OF	230
TENANTS, LARCENY BY	336
Malicious injury	341
TENTS—highways	180

PAGE

THEATRES 277
THEATRES, EXEMPTION LICENCES 210
THIEVES, HARBOURING 248, 287
THREATENING LETTERS 30, 279
Investigation, Identification 30
Larceny Act (demanding money) 332
Threatening injury 346
Threatening murder 356
THREATS 193, 279
THRESHING ENGINE NEAR HIGHWAY 179
THRESHING MACHINES 279
TICKET OF LEAVE 117
TIMBER CARTS, ETC. 284
TIME—Legal definition 209
TITLE TO LAND 79
TITLE, CLAIM OF 292
TOLL, EXEMPTION 398
TOLL BARS, INJURING 344
TOLL—Police exempted 398
TORQUAY LOCAL BOARD 254
TOWN, MEANING OF TERM 211
TOWNS IMPROVEMENT CLAUSES ACT 280
TOWNS POLICE CONSTABLES 49
TOWNS POLICE CLAUSES ACT (police) 261
TOWNS POLICE CLAUSES ACT 281
Obstructions in streets—Impounding offences ... 281, 282
Various nuisances (s. 28).
Exposing animals, dogs, cattle, carts, furious driving, obstructions, timber carts, riding on footway, projections, rolling hoops, etc., hanging clothes, obscenity, etc., fireworks, ringing bells, kites, slides, casks, rubbish, carpets, flower-pots, snow, etc., cleaning windows, cellars, refuse, pigstyes 282, 287
Sections 29 to 36 ... ... 286, 287
Drunkenness, fires, harbouring police, etc., baiting animals ... 286
Hackney carriages, bathing 287
Procedure, circular letter (*Kyle & Barber*), byelaws 288, 289
"Street" defined... 282
TRADE UNIONS 289
TRAFALGAR SQUARE (Obstructions) 234
TRAIN—Throwing stones at 262, 346
TRAINING AND DRILLING—Illegal 290

PAGE

TRAMWAYS 290
TRANSFER OF LICENCES 202
TRANSFERS OF STOCK, ETC.—Forging 348
TRANSPORTATION 240
TRAPS—Setting in gardens, etc. 226, 227, 357
TRAVELLER—*Bonâ fide* 211, 213
"TRAVELLER" REFUSING 209
"TRAVELLER," Term (*bonâ fide*) 211
TRAVELLING ALLOWANCES 24, 446, 448
TRAVELLING—Police fares 262, 434
TREASON—Petit treason 271, 290. 355
TREASURE TROVE 290
TREASURY CONTRIBUTION—Police Expenses 63, 402, 411
TREASURY (Murder cases), INFORMATION TO 185
TREASURY PROSECUTIONS, COSTS 21
TREASURY SOLICITOR 20
TREATMENT OF THE APPARENTLY DROWNED 322
TREES, INJURING 343
TREES, ETC., LARCENY OF... 197
TRESPASS 291
By fox hunters 79, 168
Claim of title 292
Game 167
On infected premises 68
TRESPASSER, POLICE EJECTING 12, 291
TRICK, LARCENY BY... 194
TRICKS, SWINDLING, ETC. 33
TROUT (Fisheries) 151
TRUCK ACT 135, 292
TRUCKS, CATTLE, CLEANSING OF... 70
"TRUE BILL,"—Term 44
TRUNCHEON, USE OF 11
TRUSTEES DISPOSING OF PROPERTY 336
TURNPIKE GATE—INJURY 344

U.

UMBRELLA, BETTING UNDER 89
UNCLEAN FISH 150
UNDUE VIOLENCE (Constable) 15

PAGE

UNFINISHED HOUSE 341
UNIFORMS ACT 292
UNION, Family, etc., chargeable to... ... ... 294, 295, 296
UNITED STATES EXTRADITION TREATY 141
UNLAWFUL ASSEMBLY 267
UNLAWFUL DETENTION (Women and Girls) 313, 318
UNLAWFUL DRILLING 290
UNLAWFUL GAMES 12
UNLAWFULLY WOUNDING 81, 356
UNNATURAL OFFENCES 315
Statutory Provisions 361
UNSOUND MEAT 258
URBAN AND RURAL DISTRICTS (Public Health) 255
URINALS (Public Health) 296
UTTERING COUNTERFEIT COIN 29, 114
Statutory Provisions 351

V.

VACCINATION 293
VAGRANTS 293, 299
Classification and punishment of 293
1. Idle and disorderly persons,
Neglecting family, application for relief, becoming chargeable, pedlars, beggars, etc. 294
2. Rogues and vagabonds,
Fortune telling, lodging out, indecency, etc., alms, family chargeable, gaming, possession of housebreaking implement or weapons, found on premises, suspected persons 296
3. Incorrigible rogues,
Procedure, expenses, warrant, appeal, liability of police, relief of vagrants 298
VAGRANT—Intending to commit felony 249
VEGETABLE PRODUCTION (Malicious injury) 343
VEGETABLE PRODUCTIONS, STEALING 197, 331
VENUE,
Coinage 354
False pretences 149
Forgery 350
Larceny 339
Malicious injury 347

PAGE

VERIFICATION OF WEIGHTS AND MEASURES 305, 307
VERMIN, KILLING OF 176
VERMINOUS PERSONS 300
VESTRY, defined (Parish Constables) 57, 58
VETERINARY SURGEON (Poisons)... 244
VEXATIOUS INDICTMENTS ACT 300
VIADUCTS, MALICIOUS INJURY TO 344
VICTUALLING HOUSES 94
VILLAGE GREEN, INCLOSING 234
VIOLENCE, UNDUE (Constable) 15
VISITING COMMITTEE (Prisoner)... 252
VIVISECTION 121, 130
VOLUNTARY STATEMENT—Prisoners 14, 16
VOLUNTEERS 75
VOMITING 27, 457
VOTING—Police 133, 402, 404, 413

W.

WAGER 90, 107
WAGON WHEELS 184
WAGES,
Goods in lieu of 135
Paying in public-house 135
Truck Act 135, 292
WALES—Closing on Sunday... 211
WARNING—Assistance to police 7
WARRANTS,
Article on—
Justices' powers to issue, constable's powers to execute, assistance, retention of, endorsement, secrecy, retaking, "fresh pursuit," "backing," borough and county police jurisdiction, search-warrants, distress warrants, action against justice, assistance to court officers ... 300—304
Miscellaneous—
Action for issue (justices) 303
Arrest with and without warrant 5, 7, 9, 10, 248
Arresting deserter 125
"Backing" 9, 301
Bastardy 88, 304
Chargeability of wife 294, 298
Commitment (procedure, executing, etc.)... 381, 383, 400
Conduct when executing 9

WARRANTS—*continued.* PAGE

Miscellaneous—continued.

Distress (procedure) 126, 303, 382
Execution of (Boroughs and counties; constables) 388, 391, 404
For arrests under Criminal Law Amendment Act 313, 318
For arrests under Criminal Law Consolidation Acts 338, 347, 350
Justices issuing 211
Not void till executed 20, 390
Possession when arresting, etc. 9, 299, 303
Search warrant 302, 338
Explosives 288, 381
Licensing 211
For girl 313, 318
Goods specified 303
Signature to evidence of 39
Summary Jurisdiction Acts 160
Sunday, issue on, etc. 8, 275, 302
Wearing apparel not seizable 388
WARRANTY (Food and Drugs) 160
WARWICKSHIRE PENSION CASE 416
WATCH COMMITTEE 48, 60, 221, 399, 401, 405
WATCHMEN 399, 403
WATER—Animals in transit 69
WATER, JURISDICTION OVER 9
WATERCRESS 148
WEAPONS, VAGRANTS ARMED WITH 297
Night poaching 169
WEIGHT, SALE OF BREAD BY 104
WEIGHTS AND MEASURES,
Article—
Inspectors, denomination, verification, stamping, forfeited weights, "multiples," analysis of Act of 1878, powers and duties of inspectors, local authority, expenses, bye-laws, legal proceedings, evidence of possessing scales in markets, sale of coal ... ... 304—311
WELSHING 91, 195
WHARVES, LARCENY FROM 334
WHIPPING 19, 311
WHIPPING ACT 311
WHIPPING CHILDREN 385
WHIRLIGIGS 260
WHISKY 163

PAGE

WHITCHURCH RIOTS 267
WHOLESALE LICENCES 206
WHOOPING COUGH 259
WIDOWS, PENSIONS, GRATUITIES, ETC. 414, 427
WIFE,
Assault by husband 80
Coercion of 311
Competency as witness 37, 93, 228, 394
Cruelty to 294
Evidence of 228
Evidence of husband 37
Frailty of temper 230
Larceny by 196
Leaving chargeable to union 80, 230, 294, 296
Lunacy of 204
Maintenance of 294
Married Women's Property Act 80, 228, 229
Property of 311
Receiving stolen goods 199, 263
Refusing to live with husband 230, 294
Separate property of 228
Succouring husband 65
WILD BIRDS 99
WILL, FORGING OF 350
WILLS, STEALING, ETC. 330
WINCHELSEA 403
WINDOW CLEANING IN STREETS 286
WINE LICENCES 364, 365
WIFE AND BEERHOUSE ACT 204, 365
WINTER ASSIZE 81
WITNESS, ILLNESS OF 23
WITNESSES,
Competency of 36, 37
Credibility of 37
Examination of 40
Expenses of 22, 24
Experts 39
Husband and wife as 37
Incapacity, oath, etc. 35
Illness of 23, 39
Legal, medical, scientific, ... 23
Ordered out of court 40

WITNESSES—*continued.* PAGE
Police as 41
Prisoner requiring, etc.... 433
WOMEN,
Aggravated assaults on 79
Employment in mines 233
Inability to appear in court (illness) 39
Medical Examination 116
Property of 228
WOMEN AND GIRLS, PROTECTION OF 312
Article—
(*Synopsis of Act*, 1885)—
Procuration, defilement, personation, abduction, detention, trial, search warrant, indecency, custody of girl, brothels, abortion, rape, indecent assault, infamous crime, procedure ... ... 312—320
WORKHOUSE (Children) 13, 108
"WORKMAN"—Term defined 174
WORKMEN EMBEZZLING MATERIALS 135
WORKS OF ART, INJURING 345
WORKSHOPS 145
WOUND—Definition 81
WOUNDING 80, 356
WOUNDING CATTLE 345
WOUNDS, ETC., EXPOSING 296
WOUNDS, TREATMENT OF 454
WRECKS 321
Restoring persons apparently drowned 322
Receivers of wrecks 321
Riot 268
Salvage of, stealing, etc. 321, 334
Statutory provisions, destroying, impeding 345, 356
WRITING—Experts 39
WRITTEN INSTRUMENTS, LARCENY OF 330
WRIT OF HABEAS CORPUS 433

Y.

YEOMANRY 75
YEOVIL MURDER CASE 16

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